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INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES GAME MANAGEMENT AGENTS
AND UNITED STATES DEPUTY GAME WARDENS

1. This manual is intended as a guide for those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918 (40 Stat. 755; U. S. Code, Title 16, Conservation, Secs. 703-711), the provisions of the United States penal code commonly referred to as the Lacey Act (Criminal Code and Criminal Procedure, Title 18, U. S. Code), as amended June 15, 1935 (49 Stat. 380), the Migratory Bird Hunting Stamp Act of March 16, 1934, (48 Stat. 451) as amended June 15, 1935 (49 Stat. 379) and is especially for the use of United States Game Management Agents, Deputy U. S. Game Management Agents, and United States Deputy Game Wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

2. Proficiency of Agents.—Game Agents can not become proficient without being thoroughly familiar with the Regulations of the Department, the practice and procedure in handling violations, and with the provisions of the Migratory-Bird Treaty, Act, and Regulations, the Lacey Act, and Migratory Bird Hunting Stamp Act. In connection with illegal interstate shipments of birds and animals it is also important that Agents become familiar with the provisions of the laws governing the export of birds and animals or parts thereof in the States within their respective districts. It is obviously impracticable to include in a manual of this character all legal provisions relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought the instructions contained herein will be helpful to all Agents and Deputies in the discharge of their duties.

To be a good officer an Agent must be not only courteous but courageous, although he should avoid any form of harshness or an overbearing attitude. His methods should be direct, orderly, and firm, without provoking resistance. When approaching a person suspected of violating the law the officer should make known his identity and give his name to the hunter, if requested, before checking over his bag, license or stamp and also give to such individual information he may desire regarding the Federal regulations.

While an Agent may exercise reasonable force, when necessary in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There will be times when an Agent must act swiftly and forcibly, and if criticized for his act, his reputation for tact and courtesy will sustain him.

The efficiency of an Agent and his usefulness to the Survey will depend in large measure upon his ability to command the respect and confidence of those with whom he comes in contact. Courtesy on the part of an Agent in his official capacity will not be tolerated.

Whenever an Agent is in doubt as to the law or methods of procedure he should write at once (or wire if the matter is urgent) to the Survey for information, stating the case fully and plainly. Cooperation and advice may also be had from United States attorneys or their assistants, and in emergencies, United States customs officials also may often be able to render valuable aid.

3. Identification of birds and game--Agents should make an effort to become familiar with all kinds of migratory birds protected by the Federal statute that occur in their districts so that they can readily identify any birds found in possession of a hunter or other individual. Knowledge in this connection may be obtained through observation in the field, at bird aviaries and zoos, likewise at museums and from bird handbooks.

Those agents who inspect fur shipments should also become familiar with the different types of furbearing animals and skins of such animals.

4. Powers of Agents under Lacey Act.--Game Agents have power to arrest offenders of Sections 242-243 or to make seizures of live wild animals or the skins or parts of the dead bodies of wild mammals and birds in cases involving violations of the Lacey Act, and may in proper cases apply for search warrants or warrants of arrest thereunder. However, the Federal court or United States attorney usually directs the issuance of warrants to bring in offenders for trial after an information has been filed or an indictment had for violations. The evidence necessary to complete a Lacey-Act case, when shipment is made by common carrier, comprises the express record of receipt and delivery of shipment, affidavit of express agent as to shipment or delivery, affidavit of consignee showing his receipt of shipment and other pertinent facts, and also canceled check issued in payment of shipment, together with original correspondence had with consignor, if available, or the illegally shipped furs or game.

If the investigation concerns the receiving "knowingly" of an illegal shipment by a consignee, the affidavit of the consignor or shipper, or of an Agent who examined the shipment in transit to establish its contents, together with the affidavit and delivery record of the common carrier, would be necessary.

In a mismarking or failure properly to mark a shipment under the Lacey Act, in addition to the above evidence, the original wrapper or container of the shipment constitutes the best evidence, but the markings of a box or barrel may be carefully described in an affidavit by a witness. Any of or all these papers or evidence obtainable by an Agent noting an apparent violation of the Lacey Act, with the Agent's report, should be

transmitted to the Survey for appropriate action. When illegal interstate transportation is by automobile or other private carrier, the facts may be established by affidavits of witnesses and such records as may be available from the consignee. In case of seizures the case will be more easily established.

5. Powers of Agents under Treaty Act:--The powers of Game Agents and those appointed to enforce the provisions of the Migratory-Bird Treaty Act are conferred by Section 5 of the Act.

United States Deputy Game Wardens possess the same police powers under this statute as Game Agents and Deputy Agents, but they are not permitted to perform travel or to incur expenses chargeable to the Survey without prior specific authorization; and when so authorized they will be paid at a per diem rate for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

All migratory birds, including the plumage or parts thereof, nests, or eggs, taken, transported, or possessed contrary to the provisions of the Migratory-Bird Treaty Act may, in proper cases, be seized and held for use as evidence and for disposition by the court. Likewise all non-migratory birds, or parts, nests, or eggs thereof, shipped or transported in interstate commerce that have been sold, purchased, carried, or transported from one State to another contrary to State law, may be seized under Section 5 of the Migratory-Bird Treaty Act or Section 242 of the Lacey Act. Positive information as to the alleged illegal transportation of migratory or non-migratory birds should be in possession of an Agent, however, before a seizure is actually effected.

Plumes of birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and Agents have no power to seize such plumage, unless it is transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act and Section 242 of the Lacey Act. (Such foreign plumage, however in possession for commercial purposes is subject to seizure by Customs authorities.)

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory-Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Agents are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond reasonable doubt that the accused is in unlawful possession of the things seized or that such articles have been or are being illegally transported. Illegal seizure not only will provoke serious criticism of the Survey but may lead to an action to recover damages against the Agents making it or to other action.

When a person commits a violation in view of an Agent, or the Agent has a warrant for the arrest of a person, he may, after he has made an arrest, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Game Agents have no right to search an accused not under arrest or to take from a person not under arrest any articles for use as evidence without his consent. After an arrest has been made an Agent may seize, in addition to contraband birds, furs or parts of wild animals being illegally transported by private conveyance in interstate commerce, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt.

The fact that the accused intends to plead guilty should not determine the course of an Agent in seizing for use as evidence game and implements used in committing the offense found on the person of the accused. The principal thing that an Agent must have in mind is to obtain sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead "not guilty" at the trial.

6. Compromise of Cases:-Game Agents must not settle or compromise any cases or offer immunity to any person accused of violating the law, and must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States (see Section 9, following), and accused persons can be fined, or imprisoned, for an offense only after conviction by Federal court or Federal judge, or in default of bond by a commissioner or other officer.

7. Duties:-Game Agents are appointed for the specific purpose of enforcing the provisions of the Migratory-Bird Act Regulations, Sections 241-244 of the United States Penal Code (Secs. 391-394, Criminal Code and Criminal Procedure, Title 18, U. S. Code), as amended, commonly referred to as the Lacey Act, and the Migratory-Bird Hunting Stamp Act. The authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Survey.

8. Appointment of U. S. Deputy Game Wardens:-Under present policy no one will be recommended for appointment as a U. S. Deputy Game Warden unless he is a member of a law enforcement agency and has the endorsement of his superior and that of the Regional Director. When he ceases to be a member of a State or local law enforcement agency, his appointment with the Bureau will be terminated. In those few States

where State legislation forbids law enforcement officers serving in dual capacity (State-Federal men), appointments can be issued to other than law enforcement officers on the recommendation of the Regional Director. Furthermore, upon recommendation of the Regional Director, appointments may be made in any State from the list of eligibles obtained as a result of U. S. Civil Service examinations for U. S. Game Management Agents and Deputies. No paid member of any cooperating law enforcement agency having a U. S. deputy game warden's appointment shall be paid any compensation from Federal funds.

Our records indicate that the following States prohibit their law enforcement officers from holding commissions as U. S. Deputy Game Wardens:

1. Colorado, Chief Deputy Wardens; regular deputy wardens may be appointed.
2. Florida.
3. Idaho, Chief Deputy Wardens; regular deputy wardens may be appointed.
4. Illinois
5. Indiana, may be appointed but can receive no compensation.
6. Maryland.
7. Mississippi.
8. New Jersey, but their non-salaried deputies may be appointed.
9. North Carolina.
10. Pennsylvania.
11. Rhode Island.
12. South Carolina.
13. Texas.
14. Virginia.
15. Wisconsin.
16. Wyoming.

9. General activities of enforcement officers--All Agents, Deputy Agents, and Deputy Game Wardens while assigned to active duty, shall devote their entire time to the Federal service, but under certain limitations they may be engaged on other work provided it does not impair their efficiency, and so long as the work to be performed in a private capacity can not be construed by the public to be official acts of the Department. (See Sec. 1548, Regulations of the Department.)

Except as directed in his letter of authorization, no Agent shall perform travel at government expense, unless specially authorized by the Survey.

An Agent will be assigned to a definite district and will confine his operations to that district unless specifically assigned to duties outside his district, but he may travel in territory contiguous to his district when violations are being committed or if the pursuit of a violator requires him to enter such contiguous territory.

When an Agent operates in a district assigned to another, either on special instructions or as a necessary incident to the conduct of his work, a copy of any letter or report to the Survey on investigations made or affecting persons apprehended violating the law should be furnished the Survey for the information of the Agent in whose district he has been operating.

It is the duty of an Agent to familiarize himself with migratory-bird and hunting conditions in his district, especially in those sections where the law is most frequently violated. Important hunting sections should be patrolled as frequently as the Agent's allotment for travel expenses will permit and when good reasons exist for his believing that conditions require his presence.

An Agent must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding persons, and open channels for information concerning those things of which he ought to get early knowledge.

10. Procedure---Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city; justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witness for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, reasonable to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had." This section relates to natural persons and does not apply to corporations, which will be proceeded against as hereinafter mentioned.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings, it is preferable for an Agent to take an arrested offender before the nearest United States commissioner for hearing, or to apply to the United States commissioner for search warrants, warrants of arrest, or other process needed in the enforcement of the Federal game laws.

Officials named in said Section 1014 customarily follow the practice in State courts. Agents, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by any of the State or municipal officials referred to in Sec. 1014 R. S. for Federal violations they must be guided by the provisions of State laws relating to the serving of such writs.

11. Corporations:--Corporations can not be prosecuted in the same manner as are individuals. In a case against a corporation, an Agent will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Survey with a report of the case. In cases involving firms, co-partnerships, or corporations, special care should be taken to ascertain the full names and addresses of all the partners of a firm or co-partnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

12. Confessions:--A confession not made in open court can not be relied upon to obtain a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration of a person that he has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. As defendants frequently deny their confessions when confronted by them in court, it is important that Agents procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the person making the confession can be taken immediately before the court and there pleads guilty. In such cases, the Agent should consult the United States attorney who, no doubt, will be willing to expedite the prosecution. It is proper for an Agent to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the Agent should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

13. Prosecution after conviction in State court:--It is a fundamental principle that where the same act constitutes a distinct offense against each of several sovereignties, a prosecution by one does not bar per se a prosecution by the other. An act, therefore, which is an offense against a State and against the United States may be punished by both, and a plea of former jeopardy in a State court will not be a bar to a prosecution in the Federal court. There is nothing in the Migratory Bird Treaty Act which makes the jurisdiction of the United States in the premises exclusive and the jurisdiction of the United States courts is not exclusive unless there are found elsewhere in the legislation of Congress provisions of clear and unmistakable import taking away the

jurisdiction of the courts of the State.

People vs. Welch, 141 New York, 266.

U. S. vs. Cruikshank, 92 U. S. 542.

U. S. vs. Barnhart, 22 Fed., 285.

In writing the opinion in the case against Cruikshank, Chief Justice White said:

"The people of the United States resident within any State are subject to two governments; one State and the other National; but there need not be any conflict between the two. The power which the one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amendable to both jurisdictions for one and the same act***. This does not, however, necessarily imply that the two governments possess powers in common or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereigns and claims protection from both. The citizen can not complain because he has voluntarily submitted himself to such form of government. He owes allegiance to the two departments, so to speak, and, within their respective spheres, must pay the penalties which each exacts for disobedience to its laws. In return he can demand protection from each within its own jurisdiction."

While there can be no doubt about the right to prosecute in Federal court a person who has been convicted in a State tribunal for the commission of the same act, the courts are loath to impose a second punishment where adequate punishment has already been meted out to the offender.

It has been, and no doubt will continue to be, the policy of the Bureau to refrain from reporting for prosecution in the Federal court violations of the Migratory-Bird Treaty Act where the accused has already been convicted and adequately fined in State court for the commission of the same act. Only in exceptional cases where the enormity of the offense or the inadequacy of the punishment inflicted in a State tribunal justifies, will the Bureau recommend that an accused person be further prosecuted in the Federal court.

In forwarding to the Bureau cases in which the accused has already been prosecuted in a State court, you should furnish not only good and sufficient reasons to warrant a further prosecution in a Federal court in case such a prosecution is recommended by you, but a full statement as to the action already taken in State court against the accused.

14. Cooperation with State Authorities:--Cooperation on the part of the public, and particularly on the part of State and municipal officials, is highly desirable and will serve to assist in bringing about proper and effective enforcement of the Federal game laws. These officials in the various branches of State and municipal governments are all in position to render invaluable assistance. A Game Agent should earn the confidence and respect of all such officers and of the public in furtherance of such cooperation.

Evidence of violations committed contrary to both Federal and State laws should ordinarily first be transmitted to the Survey for consideration, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for action.

All reports relating to the illegal interstate shipment of live animals or the dead bodies of game animals, or parts thereof, or skins of fur animals, should first be submitted to the Survey. This material will be examined, classified, carded, and such as is desirable to turn over to the States will then be forwarded from the Washington office either direct or through an Agent or Regional Director to the States interested.

Agents should make every effort consistent with the discharge of their duties in the enforcement of the Federal law to obtain evidence of State violations, and in addition to transmitting the evidence to the proper State authority in proper instances as herein outlined, should report to the Survey all such cases, including final disposition in State court. These reports are essential to enable the Survey to keep a complete record of total cooperation extended the several States in the enforcement of their game laws.

15. Affidavits:--Affidavits respecting game law violations must be carefully prepared and should contain a clear and concise statement of the facts constituting the offense within the personal knowledge of the affiant. They must show the place where (town, city, or post office, and county and State), and the exact date when (month, day, and year) the violation occurred. An affidavit indicating that an offense occurred "on or about" a certain date is not sufficient. Hearsay evidence, irrelevant matter, and facts that may be used by way of defense should be omitted from the affidavit but, for the information of the Survey, they should be stated in a report or letter, in duplicate, accompanying the affidavit.

Under a general ruling of the Federal Court of Appeals for the Eighth Circuit, affidavits for use in Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming must describe with particularity and certainty the exact place where an offense was committed.

A separate affidavit should be furnished for each individual violator, even where two or more persons are apprehended at the same time. Ordinarily, but not in all instances, duplicates of the originals properly sworn to will be acceptable where two or more persons are involved.

When practicable, witness affidavits should be sworn to before a United States Game Management Agent or Deputy U. S. Game Management Agent who has been authorized by the Secretary of Agriculture under the provisions of the Act of Congress of January 31, 1925 (43 Stat. 803), to administer oaths (the Department seal will be affixed to such affidavits when received in the Survey); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall be paid no fee for administering the oath, as they are paid their fees on accounts rendered to the Department of Justice. With regard to all affidavits sworn to before any officer other than our employees, care should be exercised to see that the seal of the attesting officer is properly affixed to the affidavit.

If such an officer is not available, and it is necessary that an affidavit be sworn to before a notary public or justice of the peace having a seal, care should be exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will then be necessary to have affixed to the affidavit the county clerk's certificate of authentication. An Agent may claim reimbursement in his account for fees thus paid to a notary, a justice of the peace, or a county clerk. When expense is involved in obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment. Where the Agent or Deputy has been authorized to administer oaths the affidavit should be sworn to before him.

It is the better practice to have witness affidavits executed before one or the other of the officials referred to in next to the preceding paragraph. However, it is not necessary that all of the affidavits relating to a particular case be sworn to before them, but in each case there should be at least one witness affidavit relating to the facts executed before such officer. It has been held that an arrest under a Federal warrant, based on affidavits verified before a notary public is in violation of the Fourth Amendment to the Constitution. Although the decision referred to involved a somewhat different form of information than used in MBTA cases, it appears that an information based upon affidavits made before a notary public may also be open to the same objection.

(1) A witness affidavit is no place for reference to an offender's personal character or standing. A person of unblemished character and repute may be as guilty of a violation of the game laws as the vilest wretch. Ordinarily, in game cases, character or reputation can throw little light upon guilt or innocence on a specific charge of violation, and if of any significance can weigh only with the court in imposing sentence, not with us as prosecutors.

An affidavit to be used in a prosecution under our game laws is customarily confined to a direct statement of facts as to the nature of the offense, the time and place where it occurred, and circumstances connected therewith, with such statements of conversations with the accused in relation to the offense charged as may have transpired.

Often, however, it is helpful to the Bureau to know anything definite about the character and reputation of a person accused of a violation of the law. But such information ought to be furnished the Bureau in the Agent's report of the case, not in the affidavits.

As to previous conviction of the offender for violation of game laws, if the affiant can, with precision, state the nature of the charge in the previous conviction and the time and place of conviction, such may appropriately be included in an affidavit; otherwise the information should be furnished the Survey in letter form when submitting evidence as to a particular offense.

As to stating time of offense in witness affidavits, it is important for you to bear in mind always that where possible the exact time, whether it be the day or time of the day, should be stated with exactness. But occasionally it will be impossible for the affiant to state the exact day or time of the day.

(2) Whether in expressing the time when an offense under Federal law was committed it is permissible to allege the time as "on or about" a certain date or a certain hour, wholly depends upon the nature of the offense. If the offense is one in which time plays no part, or as usually said "in which time is not of the essence of the offense", it is permissible, though bad practice, in the Federal courts to allege the date of the offense, if not exactly known, as "on or about" a date stated. Thus, as counterfeiting is an offense no matter when the counterfeiting takes place commission of the offense may be alleged as "on or about" a specified date, in a specified month of a specified year.

In those cases, like the counterfeiting illustration, for examples, the sale of migratory birds or the killing of wood ducks, where time is not of the essence of the offense, sale and killing being prohibited at all times, it would be permissible to allege that the sale was made or the killing done "on or about" a specified date, but the affiant, in an affidavit covering these offenses should, to be more definite, allege the time as, for example, "on or about the first day of January, 1937, the exact day being to this affiant unknown, but a day subsequent to the 20th day of December, 1936, and prior to the 10th day of January, 1937. Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time of the offense may be stated somewhat like this -- "that on or about the first day of January, 1937, I can not say exactly what day, but it was between December 20, 1936, and January 10, 1937, John Doe sold to me (or to Richard Roe, as the case may be) two wild pintail ducks, (or killed two wood ducks)" etc., or words to the same effect, no matter how framed to fit into the usual informal affidavits.

But in those migratory bird cases involving hunting in closed season, time is of the essence of the offense, for it is no offense to hunt in the open season by means not prohibited. Therefore, the date alleged in an affidavit should clearly appear as a date within the closed season and it would not be sufficient merely to allege "on or about" a specified date, for the "about" might run the time into the open season.

and therefore leave it uncertain whether the hunting occurred in the open or closed season.

In such cases, if the affiant is unable to fix the definite date of the offense, and, for illustration, the open season is September 15, to November 30, the date of the offense may be alleged in the affidavit as "on or about the first day of September, 1936, the exact day being to this affiant unknown, but a day subsequent to August 20 and prior to September 15, 1936, and within the closed season established by Federal Regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be expressed something like this -- "that on or about the first day of September, 1936 I can not say exactly what day, but it was between August 20 and September 15, 1936, John Doe was hunting mourning doves" etc., or words to the same effect no matter how framed to fit into the usual informal affidavits.

Cases involving possession of migratory game birds furnish a good illustration of the inadmissibility of the use of such a term as "on or about" December 12, 1936. Possession of migratory game birds is permitted by the Federal regulations for ten days succeeding the close of the open season, under certain conditions, and therefore time is of the essence of the offense. Assuming the open season to end November 30, possession would be permissible until December 10. If an affidavit should allege possession "on or about December 12, 1936", it could not be determined from the face of the affidavit whether the actual date of the possession was December 10, which would be legal, or December 12, which would be illegal, and so such an affidavit would be too indefinite for the purpose of prosecution.

So, in such a case, the time of the offense should be alleged as "on or about the twelfth day of December, 1936, the exact day being to this affiant unknown, but a day subsequent to December 10, and prior to December 15, 1936, and within the time prohibited by Federal regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be stated something like this -- "that on or about the twelfth day of December, 1936, I can not say exactly what day, but it was after December 10, and before December 15, 1936, John Doe had in his possession ten mourning doves", etc., or words to the same effect, no matter how framed to fit into the usual informal affidavit.

(3) What has been said with reference to affidavits as to hunting in closed season applies with greater force to affidavits as to hunting before 7 a. m. or after sunset. As the time of day in such cases is of the very essence of the offense, it is necessary to allege the time with considerable precision. Assuming that sunset on say September 11, 1936, is at five o'clock, it would not be sufficient to allege in an affidavit that the offense occurred "at or about 5:40 p.m. on the first day of September, 1936.

In submitting such cases the time may be stated as after five o'clock and before 5:30 o'clock, antemeridian, of said day to wit, 5:15

o'clock, antemeridian, John Doe was hunting mourning doves", etc., or if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made the time of the offense may be alleged somewhat like this -- "that after sunset on the first day of September, 1936, I can not state the exact time, but it was after 5:30 and before 6:00 o'clock p. m., that day, John Doe was hunting mourning doves", etc.

In the foregoing illustrations, the important point to bear in mind is that if the affiant can not fix the exact date or hour, he should fix it with reference to two other dates or hours so as to show that the time, although not exactly established, is within a time not permitted by regulations.

The dates and hours employed in the foregoing illustrations are simply examples intended to serve as suggestions to the Agent as to how to express the time of the offense, leaving him to fix the inclusive dates as circumstances require or warrant.

Merely as information for the Agents, it may be stated that grand juries in indictments and U. S. Attorneys in informations, properly may allege a specific date of violation, even though that date be not accurate, so long as it is a date that shows the offense to have been committed before the statute of limitations would bar a prosecution. All the Government needs to do in a prosecution on such an indictment or information is to prove that the offense occurred prior to the expiration of the period of limitation for such prosecutions.

In the preparation of all cases an Agent should obtain not only all the facts that are to be relied upon to prosecute successfully the accused, but also any facts that may be used by the accused by way of defense or in mitigation of punishment. Facts or matter that may be used in defense of the accused or in mitigation of punishment should not, however, be included in any affidavit that is a part of the Government's case against the accused, but should be furnished to the Bureau in a separate report, which should accompany the report of violation.

Agents should always make out the strongest case possible against the accused and submit the evidence in the form of affidavits signed by the witnesses to each violation: or, if it is impossible to obtain the affidavits of witnesses whose names or addresses are obtainable, the Bureau should be furnished with a full report showing the facts which it is claimed are within the knowledge of each of the witnesses and which facts they will testify to if subpoenaed as witnesses.

The facts contained in an affidavit should be stated in the first person singular, and conclusions or opinions of the witnesses should be omitted. Specimen affidavits follow:

S P E C I M E N A F F I D A V I T.

UNITED STATES OF AMERICA,)
State of)
County of ss
City of)

On this day of , 1936, personally appeared before me the undersigned John Jones, who, by me being first duly sworn, deposes and says: I reside at 122 Bleeker Street, in the City of Richmond, State of Virginia, and am a (Deputy) United States Game Management Agent employed by the United States Department of Agriculture, Washington, D. C.

Deponent further says that while patrolling the marsh known as Dyke Marsh, in Fairfax County, Virginia, on February 15, 1936, with Fred Jones, I saw two men in a skiff about fifty yards from me, one paddling and the other sitting forward with a gun across his knees. I stopped and watched them, and while looking at them I saw the man with the gun raise the gun and fire two shots into a small bunch of wild ducks that flew over them, and saw three wild ducks fall into the water. The men paddled a short distance and picked the wild ducks out of the water. I then walked on ahead to where I judged they would land, and waited for them. They were in plain sight all the while. When they came ashore I recognized the man who did the shooting as John Doe, of Alexandria, Va. The man who paddled the skiff was Richard Roe, also of Alexandria. I said to John Doe "John, didn't you know this was the close season on wild ducks?" He said, "Yes, but I didn't stop to think about it." I said, "I won't arrest you now, but I'll have to take your birds and report a violation against you." He said, "All right -- here they are; you know where to find me." I know both of the men personally, and for this reason did not arrest them; they are both residents of Alexandria, Va., and are employed at the shipyard. I placed the three wild ducks in cold storage with the Economy Ice Company at Alexandria, Va.

JOHN JONES.

Subscribed and sworn to before me this day of , 1936.

UNITED STATES COMMISSIONER,
Eastern District of Virginia.

SEAL

(Always give full name of a violator)

S P E C I M E N A F F I D A V I T:

UNITED STATES OF AMERICA.)
State of _____)
County of _____) ss
City of _____)

On this _____ day of _____, 1936, personally appeared before me the undersigned, John Jones, who, by me being first duly sworn deposes and says: I reside at 122 Bleeker Street, Richmond, State of Virginia, and am a United States Game Management Agent, employed by the United States Department of Agriculture, Washington, D. C.

Deponent further says that on March 1, 1936, in company with Mr. John Doe, I entered the store of Mrs. Richard Roe, 12 Main Street, Richmond, Va. A saleslady, whose name I afterwards learned was Susan Smith, approached us. Mr. Doe said "I am returning home in a day or so, and would like to take to my wife a nice plume as a souvenir -- have you any for sale?" They lady said "Yes" and showed several. Mr. Doe said "I don't like those; haven't you some pretty egret plumes?" The lady went to another part of the store and returned with a box from which she took four bunches of plumes and remarked that they were all they had, as they were hard to get. Mr. Doe picked up one and examined it, the lady continuing to explain how scarce they were. She said "These four bunches are all we have; that one you have is \$5; here is a larger and better one that we ask \$12.50 for, but as we want to close them out I can let you have it for \$10." Mr. Doe looked at it and finally said he was undecided, but would think it over and look around a bit more and would probably call later in the day. They lady started to gather them up when I said "Wait a minute - is Mrs. Roe in?" She said "Yes", and called to her. When Mrs. Roe came up I said "Mrs. Roe, I am a United States Game Management Agent. Your clerk here has offered to sell these aigrettes to Mr. Doe, and I will have to seize these aigrettes and report a case against you for offering to sell these aigrettes in violation of the Migratory-Bird Treaty Act." She said "I only had those four left and hoped I could get rid of them." I seized the four bunches and gave her a memorandum receipt for them.

JOHN JONES

Subscribed and sworn to before me this _____ day of _____, 1936.

UNITED STATES COMMISSIONER
Eastern District of Virginia.

SEAL

16. Searches and Seizures--As a general rule Agents are without authority to conduct a search for contraband migratory birds, or illegally transported wild animals or parts thereof, unless armed with a search warrant. Contraband birds found in cold storage or elsewhere during the close season may be seized and held for use as evidence, if the Agent has gained entrance into the plant through permission of the owner or superintendent in charge (someone in authority) and violations of the Migratory-Bird Treaty Act or other Federal laws are discovered. When an Agent is in possession of sufficient evidence indicating that birds or game are illegally possessed and it becomes necessary to have a search warrant before the evidence can be obtained, application for such warrant should be made to the United States commissioner or Federal judge. The application for a search warrant should describe with particularity the specific establishment, room, building, dwelling, etc., that it is desired to search. No attempt should be made to obtain a search warrant for a dwelling, except on the strongest possible evidence indicating a substantial violation. It is necessary, of course, to submit substantial evidence to justify the issuance of a search warrant for any building or place of business, but the evidence on which to search a dwelling should be practical certainty.

After a search warrant is obtained, it must be served by the officer mentioned in the warrant and be read to the owner or occupant of the premises to be searched. When a search warrant is directed to an Agent he will conduct the search in a thorough and courteous manner, with a demand in the name of the law to permit the search authorized but must confine his operations to the particular room, part of the establishment, etc., set forth in the search warrant. The premises should be left in the same condition as that in which they were found. Any migratory birds, or wild animals, or parts thereof, evidencing a violation discovered during the search, should be immediately seized, the officer leaving a receipt for the property taken. The evidence obtained should be carefully marked and preserved for use in any further proceedings in the matter. At the completion of the search the warrant should be returned to the United States commissioner with notation thereon as to the action taken. A detailed report of action taken under a search warrant should be furnished the Survey.

17. Unlawful Searches--The Act of August 27, 1935, (49 Stat. 877) provides as follows:

"Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment; Provided, that

nothing herein contained shall apply to any officer, agent, or employee of the United States serving a warrant of arrest, or arresting or attempting to arrest any person committing or attempting to commit an offense in the presence of such officer, agent, or employee, or who has committed, or who is suspected on reasonable grounds of having committed, a felony."

18. Search of Automobile:--An opinion of the Solicitor on this very important subject is quoted in full:

"Consideration has been given to the question asked in your letter of April 11, 1934, namely, whether your Game Protectors, engaged in the enforcement of the Migratory Bird Treaty Act, have authority, upon probable cause, without a warrant, to search automobiles believed to be used in the illicit disposition of ducks, and it is my opinion that the question, as you have stated it, must be answered in the affirmative, chiefly because of the assumption therein that the officer named, in making the search without a warrant, is acting upon probable cause, that is, upon a well founded belief that the vehicles to be searched are engaged in a violation of the law.

"The authority to make such a seizure, that is, without warrant and upon probable cause, is not to be found in Sec. 5, of the Migratory Bird Treaty Act to which you refer, for this specifically authorizes the Department employee only, (a) to arrest without warrant, any one violating the Act in his presence; (b) to execute any warrant properly issued; and (c) with a search warrant, to search any place. The right to make such a seizure as you refer to, though not specifically authorized by this section of the Act, is, nevertheless, well established in the common law and needs no statute for its authorization. Although I am satisfied that such a seizure is legal, it is necessary that you should be perfectly clear as to what is meant by "probable cause" in connection with searches and seizures of this kind.

"From the early days of our history, the Courts have guarded most jealously the right of the people, under the Fourth Amendment to the Constitution, "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." It has been well settled that a search and seizure is "unreasonable" if made without a warrant and not upon "probable cause". What the necessary probable cause is, which will justify a search and seizure made without a warrant, has been clearly stated in the case of Carroll vs. U. S., 267 U. S., 132, a leading case on searches and seizures, which, though it specifically involved a search under the prohibition law, is equally applicable, in the principles stated therein, to such a search as is now under consideration. On page 149 of this case, is the following:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon

probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid."

"While the same case (p. 153) shows that, practically from the beginning of the Government, in construing this constitutional guaranty of freedom from unreasonable searches and seizures, there has been recognized a necessary difference between the search of a store or house and the search of a ship or any other quickly moving vehicle, it is made perfectly plain that the requirements of the necessary "probable cause" remain unchanged. On pages 153 and 154, the court says:

"It would be intolerable and unreasonable if a prohibition agent where authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

"In further elucidation of the requirements which are necessary to constitute "probable cause" the court (page 161) quotes with approval the following from *Stacey v. Emery*, 97 U. S., 642:

"If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient ... The substance of all the definitions is a reasonable ground for belief in guilt."

"Applying the definitions and explanations thus given of the "probable cause", which is necessary in order that an automobile may be stopped and searched without a warrant, it is obvious that there is no authority to stop and seize every car moving interstate from ducking areas towards markets where possible illegally possessed ducks may be disposed of, merely because of those circumstances. It would be manifestly absurd to say, under the rule laid down in the *Carroll* case (p. 149), that a belief that every automobile "contains that which by law is subject to seizure and destruction," could "reasonably arise" out of the simple fact that the automobile was moving from a ducking area toward a place where such ducks could be disposed of or that such circumstances alone would warrant, to use the expression employed in *Stacey v. Emery* "a man of prudence and caution in believing that the offense had been committed." The Game Protector, in such a case, might indeed

suspect or think it possible that every automobile going out of such an area and moving toward such a market was carrying illicitly possessed birds which were about to be disposed of and that an offense was thus being committed, but such a suspicion would be far from the "probable cause" which the law requires and which must be a reasonable ground for belief in guilt, based on facts known to the arresting officer.

"The zeal of the courts to give protection against search without probable cause may be further illustrated by the principle laid down in the case of Director General vs. Kastenbaum (263 U. S., 25, p. 28). Here it is specifically held that even the proven good faith of the officer in believing that he had probable cause is not sufficient to secure him against a charge of false imprisonment, but that his good faith "must be grounded on facts" within his knowledge which, in the judgment of the court, would make that good faith reasonable.

"In view of the foregoing, and in enlargement of the opinion already expressed, I would advise you that your Game Protectors are not authorized to stop and search persons or cars merely because they are found to be moving out of a ducking area toward a market where disposition could be made of illicitly possessed birds; they may be stopped and searched only when, as the Carroll case puts it, there is known to them as officials, authorized to enforce the Act, probable cause for belief that such person or vehicle is "carrying contraband or illegal merchandise."

"It is most desirable, I know, that the interstate transportation of illegally possessed birds should be stopped, but it would be far worse, in my opinion, for your Game Protectors to employ illegal means in order to secure that desired end."

19. Arrests in General--An Agent should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If an Agent who acts within the scope of his employment and within his authority is sued on that account, the Department of Justice will be requested to assist in his defense; but, if an Agent knowingly exceeds his authority and gets into difficulties, he must personally arrange for his defense.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. No arrest should be made in trifling or technical cases; but in dealing with such cases great care must be used to avoid the appearance of partiality, and reports of these cases should be forwarded promptly to the Survey. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause an Agent to deviate from his duty of holding violators responsible for their illegal acts.

An Agent may make an arrest when armed with a warrant issued by a Federal court, a United States commissioner, or other officer of competent jurisdiction (see Sec. 1014, R. S., section 7, above), or without a warrant when the offense is committed in the Agent's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the Agent. The details of procedure in making an arrest with warrant and in handling the case after making an arrest without warrant are hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the Agent can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of an Agent, he should inform the accused of his identity and of the reason for making the arrest, and furnish the offender with evidence of his identity and authority, i. e., badge or identification card, if requested under the same conditions as reading of warrant.

When an arrest is made with a warrant, under no circumstances may the accused be released but he must be arraigned before the official who issued the process.

It may be unnecessary at the time the offense is committed to make an arrest when the Agent knows the accused, or has at the time so established the identity of the latter that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused and to be certain identification is positive.

When an immediate arrest is not made no warrant of arrest should be obtained, in usual cases, but the Agent should promptly furnish the Survey with his report of the violation, his affidavit of facts, and the affidavit of other material witnesses. This evidence is then transmitted through proper channels to the United States attorney for the District in which the offense was committed, and forms the basis for the filing of an information.

In case the accused is known to, or his identity has been fully established to the satisfaction of the Agent, it is good practice, as a rule, to make no arrest if the accused will agree to appear voluntarily before a United States commissioner at a specified time and will permit the Agent to take and hold for use as evidence, his gun, ammunition, State hunting license, game, or other article or paraphernalia connected with the violation. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information, as outlined in the preceding paragraph. In such cases the Agent should obtain, if possible, a written confession if the accused is willing voluntarily to make a confession, and, in any event, should obtain a written statement in which

the accused agrees, if it shall be deemed necessary, to appear before a commissioner and consents to the Agent holding the articles connected with the violation for use as evidence. If the accused refuses to give such consent and there is danger that he may escape and the articles mentioned are necessary for use as evidence against him, the Agent should make an immediate arrest and take him before a commissioner, in which event the Agent, of course, would seize such of the above enumerated articles found on or used by the accused as may be needed for evidence and hold them for use at the trial.

It is left to the discretion of an Agent as to when an arrest should be made, as it is often more advantageous not to make an arrest for a violation committed in his presence or view, for when an arrest is made and the accused is taken before a United States commissioner or other magistrate, the Agent necessarily must leave the field of activity. If the section wherein the violation is noted is a trouble zone, or if a number of violations are occurring simultaneously, an arrest immediately advertises his presence in the vicinity, and his chances of continuing his investigations under cover or of returning and apprehending the remaining violators in the area are extremely remote. In some sections it may be expedient to make an arrest, even though an accused has been sufficiently identified to be thereafter apprehended on a warrant, if the violation occurs in a trouble zone or the accused is an habitual game law violator and if an arrest under such conditions would have a salutary effect through the publicity gained by the arraignment. In instances of this nature the Agent's conduct must be governed by the conditions he encounters in the field.

It is not proper to release a person under arrest after making a seizure, and it is always advisable when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the Agent should endeavor to have the offender make a written statement or sign a regular form (after reading it or knowing its contents) showing the nature of the offense for which he has been apprehended, releasing any game seized to a charitable institution, etc., and consenting to the Agent's retaining his gun, ammunition, State hunting license, game, or other evidence connected with the violation, with the understanding that he will meet the Agent in court or before a United States commissioner when notified to appear. The Agent must caution the prisoner that his statement may be used against him in any trial that may result, and should read such statement to him or have him read it before signing.

In other words, when it is planned not to arraign an accused, the Agent should indicate to him that such determination is an accommodation to him, as, if he is taken a considerable distance to the office of a United States Commissioner and held for the action of the Federal Court, he would probably be put to the trouble and expense of furnishing bond, or possibly have to remain over night in jail in the event bond could not be immediately obtained, and have the added expense of paying his transportation expenses back home.

When no arrest is made or it is impracticable or unnecessary to take an accused before the commissioner, he will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the Agent's report and affidavit of facts.

In the matter of seizures, the fact that the accused intends to plead guilty should not determine the course of a warden in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that a warden must have in mind is to obtain sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must also be borne in mind that an accused person may change his mind and plead not guilty at the trial. A warden may seize, in addition to contraband birds, the gun, ammunition, hunting license, or any other articles found on the person of the accused that may tend to establish his identity or guilt.

29. Procedure in Arrests without Warrant:--The usual mode of procedure is here given, though the practice may vary somewhat in different States, making it necessary for an Agent to familiarize himself with the State laws governing court procedure in his district:

When a violation is committed in the presence or view of an Agent he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the Agent and satisfactory arrangements can be made for him to appear before a commissioner or magistrate at a more convenient time in the near future, if such appearance is deemed necessary by the Agent; such an arrangement should be made only when the Agent is satisfied that the offender will so appear, or, in case of his failure to do so, that he can be easily located and arrested thereafter on a warrant.

Whether the accused is arrested with or without warrant, or his offense is merely noted by the Agent, a report of the case together with affidavits of the Agent and witnesses, if any, should be forwarded promptly to the Survey.

When the offender under arrest without warrant is brought before the commissioner or other magistrate, a complaint should be prepared, sworn to before, and filed with, the official, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel, the accused must plead to the charge either "guilty" or "not guilty". He may waive or demand an examination. Each step in the proceeding will be recorded in his docket by the commissioner or magistrate.

In case of a plea of "guilty", or if examination is waived, the commissioner or magistrate will commit the accused, fix bail immediately, and require him to give bond for his appearance at the next term of the

United States court in the district in which the offense was committed. If an examination is demanded, the hearing may be at once, or an adjournment had to be a convenient date. In case of an adjournment the accused should be committed, bail fixed by the commissioner or magistrate, and bond required for appearance at the examination. If the bond is not given, the Agent should take the accused to the county or city jail designated in the warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailer as his authority to hold the prisoner, and the original warrant must be returned to the proper court or officer, with the Agent's "return" thereon.

The Agent and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

The commissioner or magistrate, in an examination of an offender, to be authorized to commit need not be convinced beyond a reasonable doubt of his guilt, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused. If the evidence shows the existence of probable cause for believing the accused to be guilty, the commissioner or magistrate should commit him for the action of the United States court in the district where the offense was committed, fix bail, and require bond for appearance in such court. In default of bail being given, the accused should be confined in the jail designated in the warrant of commitment.

The following question raised by an Agent and the opinion thereon rendered by the Solicitor, regarding the procedure and arraignment of accused persons before United States Commissioners when charged with an infraction of the Migratory-Bird Treaty Act under certain circumstances are quoted for your information:

"If I am on the Illinois bank of the Ohio River and see a violation of the Act committed on the Ohio River (the Ohio River is entirely within the jurisdiction of Kentucky), and apprehend the violator as he lands on the shores of Illinois, and the violator is not known to me, and can not satisfactorily convince me that he can be apprehended later, what am I going to do about it?"

The Act under which the various United States Game Agents operate is the Migratory-Bird Treaty Act approved July 3, 1918, 40 Stat., 755, Section 5, which reads as follows:

"Sec. 5. That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. ***"

The provision relative to arrests is not restricted, but runs throughout the United States. Consequently, Federal game agents whose work under their appointments is not restricted to any district or section of the country but is general in character, can arrest without a warrant anyone anywhere in the United States for a violation of this Act committed in their presence. The powers given Federal game agents under this Section are much broader than those granted United States marshals, in that the marshals' power to make arrests for acts committed in their presence is confined to the respective districts for which they are appointed (Sec. 788 Revised Statutes).

After a game agent has made an arrest under circumstances similar to the one stated ***, he should immediately take the offender to an officer or court having "competent jurisdiction" for examination or trial.

Section 1014, of the Revised Statutes provides:

"Sec. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a Supreme or Superior Court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

The office of Commissioner of the Circuit Court was abolished and the new office of United States Commissioner was created under the Act approved May 28, 1923, (29 Stat., 184). The said United States Commissioners were given all power previously exercised by the Commissioners of Circuit Courts, except as to appointment and fees, and all acts and parts of acts which were applicable to Commissioners of Circuit Courts are likewise applicable to the United States Commissioners.

The officer having "competent jurisdiction" under the provisions of this Act would be the United States Commissioner sitting in the Federal district in which the offender is apprehended (U. S. v. Almeida, 2 Wheeler's cr. Cas. 576), which in the instant case would be within the State of Illinois.

21. Procedure in Arrests with Warrant:--When an offense is not committed in his presence or within his view, the Agent should ascertain the material facts and report the case promptly to the Survey with affidavits of the witnesses. If the evidence thus submitted tends to establish that a crime has been committed, it will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person, and in such cases an Agent should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding an arrest.

To obtain a warrant it is necessary to comply with certain conditions in order to give the commissioner or magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before and filed with the commissioner or magistrate.

The complaint should be carefully drawn, showing in the most direct language possible who is alleged to have committed the violation, the time when and the place where the alleged violation was committed, and what acts constituted the offense; and that the acts stated were contrary to the particular Federal statute of which the violation is charged.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of the offense, the commissioner or other magistrate should issue the necessary warrant for the arrest of the accused person, as specifically authorized in Section 5, of the Migratory-Bird Treaty Act, Section 202 of the Lacey Act as amended June 15, 1935, Section 6, of the Migratory-Bird Hunting Stamp Act, or as provided in Section 1014, of the Revised Statutes.

The warrant for the arrest of the accused may be executed by any Agent or United States Deputy Game Warden to whom it may be directed, or it may be directed to a United States marshal or his deputy. The execution of the warrant consists of taking into custody the person named therein. The Agent should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before an Agent serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes an defective process he may become personally liable.

22. Expenses for Executing Process:--When a warrant of arrest or a search warrant issued by a court or officer of competent jurisdiction in connection with violations of the Federal game laws is executed by a United States Game Management Agent or one of his deputies,

the expenses of the Agent and of any prisoner prior to his commitment are a charge against funds allotted under his Letter of Authority for carrying out the provisions of the specific act that has been violated.

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by an Agent, the expenses of the marshal and any prisoner are a charge against the appropriation for the Department of Justice, and the expenses of the Agent are a charge against the appropriation for the enforcement of the particular act involved.

The expenses incurred in executing a warrant of commitment, whether by a marshal or an Agent, are chargeable against the appropriation for the Department of Justice. In case a warrant of commitment is executed by an Agent, his expense account should be rendered to the marshal for approval and placing in the way of payment.

When a warrant of any class is executed by a marshal, the Agent must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor from the Survey or the Department of Agriculture.

23. Memoranda of Observations:--All Game Agents, and all Federal Deputy Wardens when assigned to active duty, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in mind, full and complete notes must be entered in the diary to record observations of the actions of the accused, and any contraband birds, wild animals, guns, or other articles seized must be marked for identification as evidence. The notes must contain the following data:

(1) Full name and address of the accused and any distinguishing marks or characteristics that will aid in his future identification, should he not be well known to the Agent, such as deformity, scars, missing teeth, or fingers, etc.; (2) date and time of day when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds, wild animals, or parts thereof, or hunting equipment seized; (5) statements made by accused when arrested or when seizure was made; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds, reference should be made to the distance between the Agent or Deputy Warden and the accused at the time of the commission of the deed; and, if it occurred at night, the exact time of its commission should be given as shown by the watch of the Agent or Deputy, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the memory

of the officer when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter. In order that there may be no future question, when an Agent or Deputy Warden in testifying may be compelled to refer to his original notes, as to the time when data in connection with an alleged offense were recorded, he should note at the end of his memorandum statement "These data recorded this _____ day of _____" and sign or initial it.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as if it is to be contested, and leave nothing undone that should be attended to in order to be able to prove the guilt of the accused when brought to trial.

24. Preservation of Exhibits:--Contraband birds and wild animals or parts thereof must be seized immediately by an Agent and preserved, if possible, in their original condition for future use as evidence. Such seizures must be marked or tagged forthwith for identification by the Agent making the seizure, with the following information:

(1) Date of seizure; (2) place of seizure; (3) full name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) reason for seizure; (7) witnesses present when seizure was made.

When carcasses of seized dead birds or animals are to be preserved for future use as evidence, they should, promptly after being appropriately tagged, be placed in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey; plumage of birds and the skins of fur or other animals should be placed in a package and sealed in such manner that at any time the Agent can swear that the contents of such package are the identical contents that he placed therein, after which it must be safely retained or stored. Whenever possible an Agent should obtain a written agreement from the person from whom birds, animals, plumage, or specimens were seized authorizing them to be turned over to the Biological Survey for disposition for scientific, educational, or food purposes.

In case of furs, particularly valuable shipments, and wild animals and parts thereof, it will be necessary to retain them for disposition by the court upon conclusion of the case. However, if the accused is willing to consent thereto, and signs a release therefor, the bodies of seized animals or game birds should be donated to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates; migratory insectivorous or nongame birds or their plumage should be given to educational or scientific institutions. The Agent should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of

birds or plumage thus donated and transmit such receipt to the Survey. In no case should such seized articles be given to individuals or public officials for personal use. (See below for more specific instructions regarding seizure of furs under the Lacey Act.) No seized furs should be disposed of.

Where a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the Agent should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of them is obtained from the violator, they may be preserved by cutting open the abdomen and placing them in an ordinary fruit jar filled with a 10 per cent solution of formalin. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or water-proof ink should be used in marking tags. After remaining in the jar about a week they can be taken out and the carcasses dried, after which they will practically mummify and keep indefinitely.

Agents should also obtain, whenever possible, a release to the Survey of any live birds or animals that may be seized. Such birds or animals must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Survey directing that they be disposed of by liberation or otherwise.

In cases involving the killing or possession of migratory game birds in excess of the daily bag or possession limit, or shipment during a calendar week in excess of the number authorized by the Federal regulations, all the birds killed, possessed or shipped should be seized and handled in accordance with these instructions.

Unless seized birds, animals, parts thereof, or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the Agent seizing them, and for disposition by the court, and should not be forwarded to the Survey, except in those doubtful cases when it is necessary to have the specimens or plumes identified.

When convictions are obtained, or a case is finally disposed of in Federal court, unless otherwise directed by the court or the United States attorney, all birds or carcasses of animals fit for human food should be promptly donated to a public charitable institution or public hospital. If unfit for food and of no scientific value, they should be destroyed. The Survey should be informed of the final disposition of seizures.

The court will probably in each case direct disposition to be made of furs.

Guns, after cleaning, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the Agent in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked, tagged, and placed where they will not deteriorate or be lost or stolen, so that they will be available at the trial and can be returned to the accused when the case has been terminated.

If for any reason an exhibit is to be placed outside the control or possession of the Agent, he must attach an indestructible marker thereon, so that when it is returned to him he will be able to identify it as the one he had previously in his possession.

The seizure of automobiles, airplanes, vehicles, boats, or other transportation facilities used in the illegal transportation of furs, etc., under the Lacey Act is not contemplated.

25. Birds in Storage:-It is desired to keep down to a minimum the expenses incident to stored birds, carcasses of animals, or parts thereof. The Survey can not be held accountable for unpaid storage charges on seized birds, carcasses of animals, or parts thereof at the time of such seizure. Only such storage charges as accrue on and after the date such seizures are made can be paid by the Survey. Accounts covering storage charges should not be allowed to extend from one fiscal year to another, but all accounts should be rendered promptly at the close of the fiscal year for charges accruing during that period.

26. Purchase of Birds or Plumage as Evidence:-It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, because of the fact that it is unlawful to offer for sale, or to sell, migratory birds or parts thereof. The law authorizes the immediate seizure of birds and parts thereof that have been offered for sale. Agents, therefore, must not, except in rare cases and after conferring with U. S. Attorney to obtain approval, purchase birds or parts thereof to establish violations, but should immediately seize and hold for use as evidence all such birds or plumage they find offered for sale. Birds and plumage so seized may be disposed of to institutions in the same manner as outlined in the second paragraph of Section 24, on "Preservation of Exhibits."

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence of sale against him, even though evidence of a sale violation can be obtained in no other way, holding such cases to be "induced violations." In other jurisdictions the judges and United States attorneys hold a contrary opinion. Game Agents should, therefore, become familiar with the attitude of the Federal judge and United States attorney in their respective districts on this question.

27. Possession of Birds and Plumage Acquired before and since Treaty Act Became Effective:--The provisions of Section 2 of the Migratory-Bird Treaty Act, prohibiting the possession of migratory birds, or parts thereof, and their nests and eggs, are sufficiently comprehensive, in the opinion of the Bureau, to include the possession of the same, whether acquired before or since July 3, 1918, the date on which the Act became effective. It is not the policy of the Bureau, however, to enforce this construction of the statute where a bona fide acquisition of such birds, etc., occurred prior to July 3, 1918, and no attempt to sell them has been made since such date.

The provisions of Section 2, which make it unlawful to OFFER FOR SALE, SELL, OFFER TO PURCHASE, PURCHASE, etc. apply to migratory birds or parts thereof, without regard to the time when the ownership or possession was acquired.

A person, therefore, who owned and possessed migratory birds or parts thereof, and their nests and eggs, as above outlined, prior to July 3, 1918, will not be disturbed in the possession thereof by the Bureau so long as he retains this possession for his own use, and will not be required to obtain either Federal scientific or propagating permit to legalize such possession, but the Bureau will be insistent that such birds or parts thereof, and their nests and eggs, shall not be sold, offered for sale, or otherwise trafficked in without a permit.

When live or mounted specimens of migratory birds or parts thereof, and the nests and eggs of migratory birds, are found in the possession of any person, it is very important to determine (1) the date when ownership and possession thereof were acquired, and (2) whether any overt act forbidden by the Treaty Act, such as the sale or the offer for sale of the birds or parts thereof, their nests and eggs, has been committed since July 3, 1918. If the birds or parts thereof, and their nests and eggs have been sold or offered for sale in violation of the law, the necessary affidavits and reports should be furnished the Bureau.

No seizure should be made, or any action taken other than to report the facts to the Bureau in cases where birds or parts thereof, their nests and eggs, were possessed before July 3, 1918, and there is no substantial evidence showing that the birds or parts thereof or their nests and eggs have been sold or offered for sale in violation of the law; but the birds or parts thereof and their nests or eggs should be seized if substantial evidence is obtained of such sale or offer for sale.

28. Indian Reservations:--Hunting and fishing rights of Indians on their reservations as a rule have been reserved to them by treaty, and offenses against either Federal or State game and fish laws committed by Indians on their reservations are generally left to the action of the tribal authorities. Should offenses against the Migratory-Bird Treaty Act become serious, the matter should be taken up with the Superintendent in charge. (Appropriate action may be taken in particular cases through

the Department of the Interior for the enactment of tribal laws conforming to the Federal regulations). A full report of the matter should be immediately furnished the Survey. While there seems to be no doubt that the Migratory-Bird Treaty, Act, and Regulations apply to Indians on their reservations, the Survey feels that no arrests of Indians on reservations should be made under present conditions, but that such matters should be handled as indicated above.

Persons other than Indians, however, may be arrested on the reservations for violating the Migratory-Bird Treaty Act, and the permission or sanction of superintendents is not necessary to authorize such arrests. Agents should call upon the superintendents in charge of Indian reservations located in their districts, establish cordial relations with them, and acquaint themselves with the tribal regulations affecting migratory birds in the Indian country.

29. Indians Amenable to Law--A memorandum by the Commissioner of Indian Affairs, on March 17, 1936, to Superintendents of Indian Reservations under the jurisdiction of that office is as follows:

"The Bureau of the Biological Survey, Department of Agriculture, has requested that the Migratory Bird Treaty Act and the Federal laws relating to the protection of wildlife be brought to the attention of Indian reservation Superintendents, with special reference to the seasons, bag limits, species of birds and other restrictions of the Migratory Bird Treaty Act and its regulations.

"Under the Solicitor's opinion of June 15, 1934, it was held that the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. L., 755) is binding upon the Indians as well as others, irrespective of where the migratory birds may be found. It is suggested therefore, that you become familiar with the Migratory Bird Treaty Act Regulations, 1935, and the Text of Federal Laws relating to the protection of wildlife, enclosed herewith, making conscientious effort to see that they are obeyed.

"This is to be discussed by you with the tribal council or other representative tribal groups and employees for the purpose of their information and dissemination thereof generally."

30. Examination of Express Records--Game Agents should experience little difficulty in making examination of express records, as the vice-president of the American Railway Express Company under date of Sept. 30, 1920, advised the operating vice-presidents that the general rules and instructions of the company authorized agents to furnish officers and agents of the Federal government information regarding transportation of property in interstate commerce.

Agents should be careful not to antagonize agents in the event that their authority is questioned. If an agent of the express company unreasonably refuses to give you an opportunity to examine express records or to give assistance to determine whether game or fur in possession

of the company is being illegally shipped in interstate commerce, you should promptly report the facts to the Biological Survey.

The practice of the local agents of the express company is to forward within a few days to the district auditing office billings covering outgoing shipments, and in a general examination of express records in a given region it is necessary to visit the main office for the division from which the shipment was made to conduct such work. As several States are usually included in each division, it is necessary in most instances to have the Agents in the field report on points from which they desire records examined and the Survey can arrange with the Agent in the district in which the headquarters of the division office is located to make a general inspection once or twice a year or as occasion demands and obtain affidavits of express officials and copies of waybills covering shipments under investigation.

31. Mail Shipments:--The Post Office Department issued the following amendment to Section 593, of the Postal Laws and Regulations, effective May 1, 1936:

"1. Postmasters shall not accept for mailing any parcel containing the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any such birds, which have been killed or taken or are offered for shipment contrary to any law of the United States or of any State, Territory, District of Columbia, or foreign country, or State, Province, or other subdivision thereof: Provided, however, That the foregoing shall not be construed to prevent the acceptance for mailing of the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any wild birds, killed or taken during the season when the same may be lawfully killed or taken and the shipment of which is not prohibited by law in the State, Territory, District, or foreign country, in which the same are killed or taken or offered for shipment.

"2. Parcels containing the dead bodies of any game animals, or parts thereof, including furs, skins, skulls, or meat; or of any game or wild birds, or parts thereof, including skins or plumage, or the eggs of any such birds, may be admitted to the mails only when plainly and clearly marked or labeled on the outside thereof with the names and addresses of the shipper and consignee (addressee), and with an accurate statement showing by number and kind the contents thereof: Provided, however, That fresh game in any form may be accepted for transmission only to post offices to which, in the ordinary course of mail, it can be sent without spoiling. (See Sec. 591.)"

32. Construction of Game Laws Governing the Transportation and Importation of Wild Birds -- Native and Foreign:--Section 2, of the Migratory-Bird Treaty Act prohibits the shipment, transportation, etc., of any migratory bird or parts thereof, including the plumage, except as specifically permitted by regulations adopted by the Secretary of Agriculture.

Section 4, of the Act prohibits the interstate shipments, transportation, etc., by any means of any birds (migratory or non-migratory) or parts thereof contrary to the laws of the State in which they were captured, killed, or taken, or from which they were shipped, transported, or carried, and the importation of any birds, etc., captured, killed, transported, etc., contrary to the laws of any Province of Canada and covers the shipment by any means whatever and the shipment of live birds as well as the dead bodies.

A violation of Section 4 is predicated on a violation of a State law or law of a Province in Canada. In other words there can be no violation of Section 4 unless the acts committed were in violation of the law of the State or Province in which the birds were taken or from which they were shipped or transported.

The provisions of Section 2 must not be confused with the provisions of Section 4. Section 2 relates solely to migratory birds, and a violation of this section is not predicated on a violation of State law.

No change was made in Section 241 of the Lacey Act regulating the importation of live wild animals or birds from a foreign country. Violations of this section are not predicated on a violation of the law of any State or any Province or sub-division of a foreign country.

The provisions of Section 243 relate to the marking of packages in which wild animals or birds or the dead bodies or parts thereof or the eggs of birds are contained for interstate or foreign commerce. A violation of Section 243 is not predicated on a violation of State law and this section applies to the marking of packages containing wild animals or birds or parts thereof whether native or foreign species. Shipments by parcel post from one State or country to another are shipments in "interstate or foreign commerce" under Section 243.

Marking packages containing migratory birds or parts thereof is also covered by Section 2, of the Migratory Bird Treaty Act. The regulations provide that any package containing migratory game birds lawfully killed, or propagated waterfowl or parts thereof, or their eggs or specimens of migratory birds for scientific purposes, when transported shall have plainly and conspicuously marked on the outside thereof the name and address of the shipper and consignee and an accurate statement of the number and kind of birds, or eggs contained therein.

The provisions of the Tariff Act prohibit the importation of the plumage and skins of wild birds or parts thereof, including plumage and other parts of wild birds. This law is enforced by officials of the Custom Service and has no relation to the provisions of Section 241 of the Lacey Act relating to the importation of live birds.

33. Fur Inspection--Agents should regularly visit the large raw-fur receiving houses in their districts with a view to examining records of fur receipts to discover illegal shipments of skins of beavers and

other fur animals. As there is no provision in the Lacey Act compelling fur houses to open their records for inspection, an agent in order to gain access to such records must be very tactful in his dealings with the concerns. Many dealers, however, will exhibit their records. A fur dealer who seems disinclined to extend the courtesy should be advised that his cooperation will aid the Federal Government and the States in efforts to conserve the supply of fur animals, resulting in a better grade of furs reaching the market and at the same time will keep the dealer from being placed in a position of shielding law violators of this character. Such information as appears to cover illegal shipments which it may be advisable to submit to State game departments should be copied on Form Bi-928, and submitted to the Survey, where it will be viewed and then forwarded to the interested States, or to other Agents for investigation.

34. Lacey Act--Section 242 of the Penal Code (the so-called "Lacey Act") was amended and greatly broadened by the Act of June 15, 1935, (49 Stat. 380) with respect to the interstate shipment of wild animals and birds, to include live animals and birds, as well as the dead bodies or parts thereof, and the eggs of birds; to include transportation by any and all means (formerly limited to transportation by common carrier); and to prohibit transportation from one State to another, including any Territory and the District of Columbia, or any wild animal or bird or the dead body or part thereof, or the eggs of birds, that have been purchased, sold or possessed, as well as killed, taken, or shipped, contrary to the law of any State, etc., Province, or subdivision of a foreign country in which it was killed or taken, or from which shipped. A violation of the section is also predicated on a violation of State law or the law of a Province or subdivision of a foreign country except that portion of Section 242 relating ⁱⁿ to the making of a false record or rendering of a false account which is/dependent of State law.

A new provision was inserted in the amendment to the Lacey Act to prohibit consignees from knowingly purchasing any wild animal or bird, or the dead body or part thereof, or the eggs of any such bird imported from a foreign country, or shipped, transported, carried, brought or conveyed in violation of Section 242. The consignee is also precluded from making any false record or rendering any account that is false in any respect in reference to any wild animal or bird, or the dead body or part thereof, or the egg of any such bird, that has been imported from a foreign country, or shipped, transported, or carried in interstate commerce.

The powers of arrest and seizure and the holding and disposition of seizures are covered under Section 202.

Section 243 is as follows:

"All packages or containers in which wild animals or birds, or the dead bodies or parts thereof, or the eggs of any such birds are shipped, transported, carried, brought, or conveyed, by any means whatever, from one State, Territory, or the District of Columbia

to, into, or through another State, Territory, or the District of Columbia, or to or from a foreign country shall be plainly and clearly marked or labeled on the outside thereof with the names and addresses of the shipper and consignee and with an accurate statement showing by number and kind the contents thereof."

In enforcing Section 243 of the Act it is expected agents will exercise judgment and discretion.

In past years there have been reports of many illegal shipments of beaver and other protected animals and under this section we may be able to locate a number of these unlawful shipments and effectively check such operations. Doubtless there may be cases where the circumstances surrounding the shipments might indicate to you that the omission to mark was due to absolute ignorance of the law without any purpose to evade the statute and where, if the statute had been in the mind of the shipper, there would have been no reason whatever for deliberately omitting the marking. In such instances it is well enough to make note of the omission and make a report thereof to the Survey.

Where it is reasonably clear that the package contains skins that likely were shipped in violation of some State law, and that they are deliberately mismarked, or not marked at all, so as to avoid detection, seizure should be made.

Any skins seized must be placed in cold storage at a temperature about 25 degrees to 30 degrees F. and where free from rats or other vermin, and held for action of the court. No furs once seized should be returned unless authority to do so has been granted by the Survey after study of the facts. The wrapper on a package or container should be preserved as evidence with all the original markings and tags, if any. Affidavits and a complete report in connection with any seizure should be furnished the Survey as promptly as possible as this class of cases, in the very nature of things, must be handled as expeditiously as possible.

Where there is doubt regarding its legality or illegality it would be safer to allow a package containing furs to continue to destination than seize it. Notation can be made of the markings, waybill, etc., so that thereafter the agent can furnish his affidavit based on such facts, if further investigation discloses a violation was committed. In some instances a fur house may cooperate by holding such package for a few days pending completion of investigation and if found to be unlawful the original package could then be obtained.

Seizures of furs under the Lacey Act as amended must be handled on a different basis, mainly because of their commercial value and the provisions of the law. Large shipments are apt to be quite valuable, and it is seldom necessary to impose sole responsibility upon the agent in the field for their disposition. It will be possible in connection with fur seizures simply to detain the shipment, report the full facts to the Bureau, and obtain specific instructions for its disposition.

Where illegal shipments or suspected illegal shipments have reached the hands of consignees and are still on hand and subject to seizure under proper authority the consignee might be told it may be desirable to withhold checks or remittances in payment therefor until all questions of legality of shipment have been cleared up.

Where legal furs are commingled with illegal furs in an interstate shipment and it is not possible to separate one from the other the entire shipment can be held.

Illegal furs entering commerce that have been purchased and paid for by the consignee, if they can be positively so identified, should be seized wherever found, except in the hands of an innocent third party purchaser. Evidence of such shipments should be reported for transmittal to proper authorities. Invoices and cancelled checks issued in payment therefor, together with shipping evidence are essential.

Falsification of records of the receipt of wild animals or birds, or parts thereof that have been carried, shipped, or transported in interstate commerce, or the rendering of false accounts with respect thereto, by consignees, unless the shipment was illegally made, does not justify seizure of the shipment with respect to which the false record or false account has been made or rendered.

Failure to mark or the mis-marking of shipments for interstate transportation are ordinarily strictly Federal violations.

No seizure of illegal skins or animals from consignees can be returned to the States from which made. They must be held for disposition by the Federal Court at the time of conclusion of the case.

35. Duck Stamp Act---The Migratory-Bird Hunting Stamp Act of March 4, 1934 (48 Stat., 451) as amended June 15, 1935 (49 Stat. 379) makes it necessary for all individuals over 16 years of age hunting wild ducks, geese, and brant to have on the person while so hunting a stamp issued by postmasters, the fee for which is \$1.00. The stamp must be validated by the hunter writing his name across its face in ink. Any hunter afield with a stamp not so validated should be asked to write his name on the stamp. If the request is not forthwith complied with or you have good reason to believe he is hunting with a stamp of another person, the stamp should be seized and arrest made if circumstances justify and report sent to the Survey. No person over 16 years should be permitted to hunt without the stamp. Agents should check daily all waterfowl hunters in the field to see that they have the stamp and reports of cases justifying Federal prosecution should be sent to the Survey.

Power of arrest under this Act is set forth in Sec. 6.

36. Migratory-Bird Conservation Act:--The Migratory-Bird Conservation Act of February 18, 1929 (45 Stat. 1222) authorizing the establishment of a system of national refuges for migratory birds is administered by another division and special instructions thereon have been issued to the enforcement personnel of that division. Agents should cooperate as far as possible in the protection of migratory birds on these areas. Police power is conferred by Section 13.

37. Protection of Wild Animals and Birds and Bird's Eggs and Government Property on Federal Refuges:--Section 145, Criminal Code and Criminal Procedure, Title 18, U. S. Code, which has relation to areas set aside as refuges or breeding grounds for wild animals and birds, and is administered by the Biological Survey, is as follows:

"Section 145. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird or wild animal of any kind whatever, or take or destroy the eggs of any such bird on any lands of the United States which have been set apart or reserved as refuges or breeding grounds for such birds or animals by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture, may, from time to time, prescribe, or who shall willfully injure, molest, or destroy any property of the United States on any such lands shall be fined not more than \$500, or imprisonment not more than six months, or both. (Sec. 84, Act of March 4, 1909, as amended April 15, 1924, 48 Stat. 98)"

Police power to handle trespassers on bird and game refuges and reservations is derived from Sec. 13, of the Migratory Bird Conservation Act (45 Stat. 1222).

Prosecutions for infractions thereof are generally instituted by the filing of an information. Agents should obtain and furnish the Survey with witness affidavits regarding any violations of this section that may come to their attention and cooperate fully with reservation protectors and rangers. (Sec. 10 of the M.B. Conservation Act also relates to trespass on wildlife refuges.)

38. Assault Act:--An amendment to the Act of May 18, 1934, (48 Stat. 780) was approved on February 8, 1936, so as to include within its terms any officer or employee of the Department of Agriculture designated by the Secretary of Agriculture to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals.

The Act makes it unlawful to forcibly resist, oppose, impede, intimidate, or interfere with an officer engaged in performing official duties, or assault him on account of such duties, and fixes the penalty at not more than \$5,000, or imprisonment for not more than three years, or both. If a deadly or dangerous weapon is used, the penalty is not more than \$10,000, or more than ten years' imprisonment, or both.

Where an officer is killed in line of duty, the penalty is, as provided in Section 275, of the Criminal Code, upon conviction, for murder in the first degree, death; for murder in the second degree, imprisonment for not less than ten years or life; for voluntary manslaughter, imprisonment for not more than ten years; for involuntary manslaughter, imprisonment for not more than three years, a fine not exceeding \$1,000, or both.

The Statute, as amended, (49 Stat. 1105) reads as follows:

"That whoever shall kill, as defined in Sections 273 or 274, of the Criminal Code, any United States marshal or deputy United States marshal, special agent of the Federal Bureau of Investigation of the Department of Justice, post office inspector, Secret Service operative, any officer or enlisted man of the Coast Guard, any employee of any United States penal or correctional institution, any officer of the Customs Service or of the Internal Revenue Service, any immigrant inspector or any immigration patrol inspector, any officer or employee of the Department of Agriculture designated by the Secretary of Agriculture to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Division of Grazing of the Department of the Interior, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under Section 275, of the Criminal Code."

"Sec. 2. Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person designated in Section 1, hereof while engaged in the performance of his official duties, or shall assault him on account of the performance of his official duties, shall be fined not more than \$5,000, or imprisoned not more than three years, or both; and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both."

No police power is conferred on Department employees under this Act. Proceedings can be instituted, however, by filing a complaint with a U. S. Commissioner, but doubtful cases should be taken up with the U. S. Attorney.

39. Black Bass Law:--The Hawes law (44 Stat. 576) regulating the interstate transportation of black bass caught, sold, purchased, or possessed contrary to the law of the State, Territory, or District of Columbia wherein the delivery of such fish for transportation is made,

is committed to the Bureau of Fisheries in the Department of Commerce for administration. Any violations of the act that come to the notice of Agents should be reported to the Survey.

40. Bait and Parts of Birds:--In the prosecution of any person for shooting doves or waterfowl over or by means of bait it is necessary that we have for presentation as evidence at the trial some of the grain or other foods recovered by Agents that had been scattered or placed on the area over which shooting was done. For this purpose only a small quantity would be required and this could be placed in a glass jar or other receptacle after being appropriately marked on the outside to indicate the field from which taken, the date taken and the names of the persons who were hunting.

In connection with the purchase of meals at which game birds are served we call attention to the necessity of saving a few bones from migratory game birds that may be furnished by hotels or restaurants. Such bones, where there is any doubt as to the particular species of waterfowl involved, should be forwarded to the Survey by registered mail in order that they may be identified here by an expert, after which the bones will be returned to the agent for use as evidence at the time of trial. The United States Attorney will be furnished with an affidavit from the Bureau expert who examined the bones and identified them as being parts of migratory game or other birds afforded protection under the Migratory-Bird Treaty Act.

41. Youthful Violators:--When three Migratory-Bird Treaty Act cases were called for trial in a Federal court, it developed that the offenders were boys of 14 and 15 years of age. When the cases were submitted to the Bureau the report gave the age of each boy as more than 18 years, otherwise they would never have been reported for Federal prosecution. The submission of cases of this character to Federal court generally results in no benefit and often in just criticism, and takes up considerable time of the prosecuting officials.

It is not the practice of the Bureau to report for prosecution cases wherein the offenders are less than 18 years of age unless the offenses committed are of a very serious nature and every other recourse has been exhausted. Many offenses by youths are inconsequential and neither require nor justify bringing the boys into Federal court. Any small fine imposed would not, in my judgment, deter boys from committing violations in the future; and would undoubtedly result in the assumption of an antagonistic attitude toward the enforcement of the game laws and disrespect for Federal conservation officers.

There is no doubt that the air rifle and the sling shot play an important part in the destruction of a number of our migratory birds. The ambition of youth seems to be for a display of marksmanship, and the difficulties of repressing these actions by young America has been ever present. Two remedies present themselves, however, (1) the presentation of the matter to the parent or guardian of the offender or (2) reference to the United States attorney. It has been our experience that the

parents are usually willing to lend a helping hand in an effort to curb the more or less pernicious activities of their children. Where it develops that a parent contemplates placing no restrictions upon his child in connection with the destruction of migratory-bird life, then the agent should discuss the matter with the United States attorney and endeavor to have this official require the boy to appear before him, at which time he could explain the object and purposes of the Federal game law and the necessity for his strict observance of it.

In future when reporting to the Bureau cases against boys, accompany the report with Form Bi-300, on which should be shown the age of the boy and also whether he is attending school or is employed.

42. Cold-Storage Cases:--In connection with the possession of migratory waterfowl in cold storage during the Federal close season, proof should be furnished the Survey that the seized birds had been placed in storage by the person whose name is given on the package or that they were put in storage by another acting under his authority. An affidavit to this effect (giving the date the birds were placed on storage) should be obtained, if possible, from the manager of the storage plant or other person in charge having personal knowledge of the fact. In addition the Agent should interview the accused, if convenient, in an effort to procure a signed release for such birds, or an admission of ownership, which, if verbal, should be included in the Agent's affidavit. If it is not possible personally to interview the accused, the matter of procuring a release should be taken up with him by correspondence.

43. Spite Cases:--Where the sole evidence in connection with an offense consists of an affidavit by an individual, unsupported by affidavit of a U. S. Game Management Agent or Deputy Agent, U. S. Deputy Warden, or State Warden, it will be necessary for the Agent or Deputy to furnish a statement indicating that the violation was actually committed by the accused and that the affidavit was not furnished as a result of spite work or personal enmity. An Agent should endeavor to obtain sufficient evidence to substantiate the facts related in the witness affidavit and should in all cases interview the accused or else write him for his version of the matter and then submit to the Survey any communication or affidavit received as a part of the evidence in the case.

44. Reporting Violations:--There should be as little delay as possible in forwarding cases for prosecution, as stale cases are not looked upon with favor by courts and prosecuting attorneys.

45. Handling Cases Direct:--The Survey has no objection to Agents furnishing United States attorneys with witness affidavits covering offenses wherein an accused has expressed a willingness to enter a plea of guilty and when court is in session or about to convene, provided such procedure has the approval of the prosecuting attorney. In all cases of this character, however, on the filing of the evidence with the United States attorney the Survey must be immediately advised and furnished with a copy of the witness affidavits so that the Survey in turn may submit it

to the Solicitor of the Department, who will promptly take the matter up with the Department of Justice.

46. Interest in Cases:--An Agent's interest in a particular case should not lapse after submission of evidence to the Survey and the case has been forwarded for prosecution. Cases have been known to lie dormant for long periods. When an Agent is at a point where Federal court meets and in a district where cases obtained by him are known to be pending, he should call at the clerk's office and ascertain their status, and take up with the United States attorney or his assistant the matter of pending cases to ascertain whether arrangements can be made for their early disposition.

In this connection an Agent should remember that the prosecuting attorney is busily engaged with various kinds of prosecutions and therefore should be tactful in his dealing with his official. He should not offer any criticism of the manner in which cases are handled but answer all questions and in a general way give any information the attorney may desire. Agents are not authorized to agree to the dismissal of cases but the United States attorney should make his recommendations in such matters through the Department of Justice.

47. Concealed Weapons:--Firearms are furnished to Game Agents as a means of self-protection to be carried when on active duty and they must not be used unless there is impending danger. It is not permissible for an Agent to use a pistol or gun as a means of compelling an offender to obey his command to halt.

A commission as U. S. Deputy Game Warden does not, in itself, give the right to carry a revolver or pistol at all times. There is no Federal statute specifically authorizing Federal officers to carry firearms, but, in some instances, where such officers have been arrested by State officials when in the discharge of their official duties the courts have held that the right conferred by law to make arrests impliedly gives Federal officers all rights and powers necessary to enforce the authority conferred upon them, and that when they are engaged in the enforcement of a Federal statute they are not bound by a State law prohibiting them from carrying concealed weapons.

The Bureau does not permit its deputy game wardens to carry concealed weapons, except for personal defense when in the discharge of their official duties. If, at any time, a deputy game warden should be placed on per diem duty by the Bureau to enforce the provisions of the Migratory-Bird Treaty Act, we are of the opinion that he would then have the right to carry a concealed weapon while on such active duty, to be used, when necessary, in the defense of his person, and that a State law prohibiting the carrying of such concealed weapon would not then apply. On all other occasions, however, he must comply with the provisions of the laws of the State in which he may be when he desires to carry a revolver or other firearm.

48. Attendance at Meetings and Delivery of Lectures:-- A Game Agent may attend meetings in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to his work and the Federal game laws. Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Survey permission to do so.

49. Fees:--(See Sec. 1522, Regulations of Department). Directors or Agents who testify in any judicial proceeding in Federal or State courts in any case involving violations of the Federal game laws, or in cases originating in the Department, shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations.

When an employee appears in cases between private parties or by some party other than the Federal Government where the employee is called upon solely because of and to testify in his official capacity or to produce official records or information, fees and expenses should be accepted but all amounts so collected over and above the amount of actual and necessary expenses, a statement of which must be furnished the Chief of the Bureau, must be turned into the Treasury as Miscellaneous Receipts.

When an employee appears as a witness on behalf of the United States in any case not originating in this Department, his account for travel and subsistence prepared on a special form furnished by the U. S. Marshal, should be presented to the marshal or other officer of the court authorized to pay the expenses of witnesses.

When an employee appears in any judicial proceeding on behalf of any party other than the United States, he should arrange in advance with the party in whose interest he appears for his travel and subsistence expenses.

United States Game Agents must not accept any fees, parts of fines, rewards, or remuneration of any kind as payment or reward for obtaining or assisting in obtaining cases involving violations of State or Federal game or fish laws.

50. Reports:--Agents must also forward to the Survey and to the Regional Director at the end of each week, on blanks furnished for that purpose, a summary report containing detailed statements of their activities during each week and the results accomplished. These reports must be in sufficient detail to give information as to the actual work performed and results accomplished each day, together with time of arrival at and departure from points between which travel is performed.

Deputy Game Wardens must render weekly reports on blanks supplied, during the time they are actually employed.

51. Itinerary:--The Survey should be kept informed of a Director's or Agent's itinerary while absent from headquarters so he can be

easily reached in an emergency, unless detailed instructions in that regard have been given to some one at his office or home address.

A Regional Director should see to it that some one is designated to be constantly in the office during his absence to take care of callers and answer correspondence.

52. Care of Property:--Care should be exercised in preventing the loss or theft of badges, pistols, binoculars, or other equipment, as lack of ordinary care will probably make it necessary to require an employee to pay for such lost property. An unscrupulous person with a badge could reap personal gain by impersonating a Federal officer.

53. Writing Accusatory Letters:--In the investigation of violations of the Federal game laws Agents and all deputies must not write letters accusing persons of having violated, or warning them not to violate the law. Several accusatory letters couched in sarcastic language have been written by some of our employees to persons warning them that they would get into trouble with the Government if they persisted in violating the law. The Bureau can not countenance this practice.

When there is reason to believe that any person has committed a violation it is the duty of Agent or deputy promptly and vigorously to investigate the matter. The investigation should be conducted in a quiet, orderly manner and, if possible, without the knowledge of the supposed violator. When the investigation discloses that a violation has been committed and it is desirable to obtain, if possible, a signed statement from the accused person in order to strengthen the case against him, or a reasonable doubt exists in regard to the guilt of such person, it is proper for an Agent or deputy to interview or write to the suspected person for the purpose of obtaining any statement he may care to make concerning the transaction. The entire investigation should be conducted, however, in a dignified manner and in a way least calculated to give offense to any person.

54. Correspondence and Telegrams:--Original letters from United States Attorneys and their assistants in regard to game law cases, together with copy of the Agent's reply, if any, should be furnished the Survey.

All letters to the Survey should be directed to the "Chief, Biological Survey, Washington, D. C." Communications should be sent to no other Department or Bureau of the Government at Washington.

All telegrams to the Survey should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but Agents should not hesitate to use them in emergency cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense in respect to annual or sick leave, or leave without pay.

When writing to the Survey letters containing information that must be submitted to another Agent for further investigation Agents should furnish an original and one carbon copy.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case or subject involved.

Attention is called to Section 1631, of the Regulations of the Department of Agriculture.

No individual's name shall appear on any letterhead used in the Department.

55. Transportation Requests--Transportation requests should be used in paying for railroad transportation (and for air travel where justified) except when it may be necessary to pay cash face in order to conceal the identity of an Agent.

56. Leave of Absence--Sections 2511 to 2562, inclusive, of the Department Regulations must be strictly followed. Deputy Wardens and temporary employees are not entitled to leave of absence.

57. Personal Conduct--Employees shall at all times conduct themselves in a manner so as to not cause embarrassment to or criticism of the Department or interfere with the efficient performance of their duties. For example, employees of the Department whose duties require the enforcement of laws or regulations or who are in a position to award or influence the award of business or to grant or influence the granting of favors, should not accept from any person, firm, or corporation with which he has official relations any favor, gift, loan, unusual discount, gratuitous service, or other thing of value; nor should any employee of the Department give or use information acquired by means of his official position to advance the interests of himself, his family, his business associates, or his personal friends over those of other persons.

58. Political Activity--(See paragraph 1542, Regulations of the Department).

59. Temporary Assistant--A temporary assistant hired under letter of authority does not possess powers conferred by Section 5, of the Migratory Bird Treaty Act, Section 202 of the Lacey Act, Section 6 of the Waterfowl Stamp Act, or Section 13 of the Migratory-Bird Conservation Act to make arrests, or otherwise exercise police powers in the enforcement of any of these acts. Only those persons specially authorized by the Secretary of Agriculture may exercise such police powers, but a temporary assistant may render aid to a regular employee in making an arrest. Such temporary assistant would be a competent witness.

60. Efficiency:--An Agent is rated upon efficiency, and in fixing ratings the following matters will be considered:

- (1) The status of game law observance in his district.
- (2) General activity in the district covered.
 - (a) The sufficiency of evidence gathered upon which to base prosecutions.
 - (b) Knowledge of the law and of conditions.
 - (c) Cooperation with State and Federal officials.
 - (d) Expenses incurred.
 - (e) Completeness of reports.
- (3) Compliance with regulations of the Department and rules of the Survey.
- (4) Willingness to work.
- (5) Initiative.
- (6) Dispatch.
- (7) Accuracy.
- (8) Neatness.
- (9) Cheerfulness with which duties are performed.
- (10) Personal conduct.

No attempt has been made to list these subjects in the order of their importance; suffice it to say that an Agent's entire course of conduct and activity will be scrutinized and considered in determining his efficiency.

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UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Biological Survey
Washington, D.C.

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INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES GAME MANAGEMENT AGENTS
AND UNITED STATES DEPUTY GAME WARDENS

1. This manual is intended as a guide for those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918 (40 Stat. 755; U. S. Code, Title 16, Conservation, Secs. 703-711), the provisions of the United States penal code commonly referred to as the Lacey Act (Criminal Code and Criminal Procedure, Title 18, U. S. Code), as amended June 15, 1935 (49 Stat. 380), the Migratory Bird Hunting Stamp Act of March 16, 1934, (48 Stat. 451) as amended June 15, 1935 (49 Stat. 379) and is especially for the use of United States Game Management Agents, Deputy U. S. Game Management Agents, and United States Deputy Game Wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

2. Proficiency of Agents.--Game Agents can not become proficient without being thoroughly familiar with the Regulations of the Department, the practice and procedure in handling violations, and with the provisions of the Migratory-Bird Treaty, Act, and Regulations, the Lacey Act, and Migratory Bird Hunting Stamp Act. In connection with illegal interstate shipments of birds and animals it is also important that Agents become familiar with the provisions of the laws governing the export of birds and animals or parts thereof in the States within their respective districts. It is obviously impracticable to include in a manual of this character all legal provisions relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought the instructions contained herein will be helpful to all Agents and Deputies in the discharge of their duties.

To be a good officer an Agent must be not only courteous but courageous, although he should avoid any form of harshness or an overbearing attitude. His methods should be direct, orderly, and firm, without provoking resistance. When approaching a person suspected of violating the law the officer should make known his identity and give his name to the hunter before checking over his bag, license or stamp and also give to such individual information he may desire regarding the Federal regulations.

While an Agent may exercise reasonable force, when necessary in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There will be times when an Agent must act swiftly and forcibly, and if criticized for his act, his reputation for tact and courtesy will sustain him.

The efficiency of an Agent and his usefulness to the Survey will depend in large measure upon his ability to command the respect and confidence of those with whom he comes in contact. Courtesy on the part of an Agent in his official capacity will not be tolerated.

Whenever an Agent is in doubt as to the law or methods of procedure he should write at once (or wire if the matter is urgent) to the Survey for information, stating the case fully and plainly. Cooperation and advice may also be had from United States attorneys or their assistants, and in emergencies, United States customs officials also may often be able to render valuable aid.

3. Identification of birds and game:--Agents should make an effort to become familiar with all kinds of migratory birds protected by the Federal statute that occur in their districts so that they can readily identify any birds found in possession of a hunter or other individual. Knowledge in this connection may be obtained through observation in the field, at bird aviaries and zoos, likewise at museums and from bird handbooks.

Those agents who inspect fur shipments should also become familiar with the different types of furbearing animals and skins of such animals.

4. Powers of Agents under Lacey Act.--Game Agents have power to arrest offenders of Sections 242-243 or to make seizures of live wild animals or the skins or parts of the dead bodies of wild mammals and birds in cases involving violations of the Lacey Act, and may in proper cases apply for search warrants or warrants of arrest thereunder. However, the Federal court or United States attorney usually directs the issuance of warrants to bring in offenders for trial after an information has been filed or an indictment had for violations. The evidence necessary to complete a Lacey-Act case, when shipment is made by common carrier, comprises the express record of receipt and delivery of shipment, affidavit of express agent as to shipment or delivery, affidavit of consignee showing his receipt of shipment and other pertinent facts, and also canceled check issued in payment of shipment, together with original correspondence had with consignor, if available, or the illegally shipped furs or game.

If the investigation concerns the receiving "knowingly" of an illegal shipment by a consignee, the affidavit of the consignor or shipper, or of an Agent who examined the shipment in transit to establish its contents, together with the affidavit and delivery record of the common carrier, would be necessary.

In a mismarking or failure properly to mark a shipment under the Lacey Act, in addition to the above evidence, the original wrapper or container of the shipment constitutes the best evidence, but the markings of a box or barrel may be carefully described in an affidavit by a witness. Any of or all these papers or evidence obtainable by an Agent noting an apparent violation of the Lacey Act, with the Agent's report, should be

transmitted to the Survey for appropriate action. When illegal interstate transportation is by automobile or other private carrier, the facts may be established by affidavits of witnesses and such records as may be available from the consignee. In case of seizures the case will be more easily established.

5. Powers of Agents under Treaty Act:--The powers of Game Agents and those appointed to enforce the provisions of the Migratory-Bird Treaty Act are conferred by Section 5 of the Act.

United States Deputy Game Wardens possess the same police powers under this statute as Game Agents and Deputy Agents, but they are not permitted to perform travel or to incur expenses chargeable to the Survey without prior specific authorization; and when so authorized they will be paid at a per diem rate for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

All migratory birds, including the plumage or parts thereof, nests, or eggs, taken, transported, or possessed contrary to the provisions of the Migratory-Bird Treaty Act may, in proper cases, be seized and held for use as evidence and for disposition by the court. Likewise all non-migratory birds, or parts, nests, or eggs thereof, shipped or transported in interstate commerce that have been sold, purchased, carried, or transported from one State to another contrary to State law, may be seized under Section 5 of the Migratory-Bird Treaty Act or Section 242 of the Lacey Act. Positive information as to the alleged illegal transportation of migratory or non-migratory birds should be in possession of an Agent, however, before a seizure is actually effected.

Plumes of birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and Agents have no power to seize such plumage, unless it is transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act and Section 242 of the Lacey Act. (Such foreign plumage, however in possession for commercial purposes is subject to seizure by Customs authorities.)

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory-Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Agents are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond reasonable doubt that the accused is in unlawful possession of the things seized or that such articles have been or are being illegally transported. Illegal seizure not only will provoke serious criticism of the Survey but may lead to an action to recover damages against the Agents making it or to other action.

When a person commits a violation in view of an Agent, or the Agent has a warrant for the arrest of a person, he may, after he has made an arrest, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Game Agents have no right to search an accused not under arrest or to take from a person not under arrest any articles for use as evidence without his consent. After an arrest has been made an Agent may seize, in addition to contraband birds, furs or parts of wild animals being illegally transported by private conveyance in interstate commerce, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt.

The fact that the accused intends to plead guilty should not determine the course of an Agent in seizing for use as evidence game and implements used in committing the offense found on the person of the accused. The principal thing that an Agent must have in mind is to obtain sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead "not guilty" at the trial.

6. Compromise of Cases:--Game Agents must not settle or compromise any cases or offer immunity to any person accused of violating the law, and must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States (see Section 9, following), and accused persons can be fined, or imprisoned, for an offense only after conviction by Federal court or Federal judge, or in default of bond by a commissioner or other officer.

7. Duties:--Game Agents are appointed for the specific purpose of enforcing the provisions of the Migratory-Bird Act Regulations, Sections 241-244 of the United States Penal Code (Secs. 391-394, Criminal Code and Criminal Procedure, Title 18, U.S. Code), as amended, commonly referred to as the Lacey Act, and the Migratory-Bird Hunting Stamp Act. The authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Survey.

8. Appointment of U. S. Deputy Game Wardens:--Under present policy no one will be recommended for appointment as a U. S. Deputy Game Warden unless he is a member of a law enforcement agency and has the endorsement of his superior and that of the Regional Director. When he ceases to be a member of a State or local law enforcement agency, his appointment with the Bureau will be terminated. In those few States

where State legislation forbids law enforcement officers serving in dual capacity (State-Federal men), appointments can be issued to other than law enforcement officers on the recommendation of the Regional Director. Furthermore, upon recommendation of the Regional Director, appointments may be made in any State from the list of eligibles obtained as a result of U. S. Civil Service examinations for U. S. Game Management Agents and Deputies. No paid member of any cooperating law enforcement agency having a U. S. deputy game warden's appointment shall be paid any compensation from Federal funds.

Our records indicate that the following States prohibit their law enforcement officers from holding commissions as U. S. Deputy Game Wardens:

1. Colorado, Chief Deputy Wardens; regular deputy wardens may be appointed.
2. Florida.
3. Idaho, Chief Deputy Wardens; regular deputy wardens may be appointed.
4. Illinois.
5. Indiana, may be appointed but can receive no compensation.
6. Mississippi.
7. New Jersey, but their non-salaried deputies may be appointed.
8. North Carolina.
9. Pennsylvania.
10. Rhode Island.
11. South Carolina.
12. Texas.
13. Virginia.
14. Wisconsin.
15. Wyoming.

9. General activities of enforcement officers:--All Agents, Deputy Agents, and Deputy Game Wardens while assigned to active duty shall devote their entire time to the Federal service, but under certain limitations they may be engaged on other work provided it does not impair their efficiency, and so long as the work to be performed in a private capacity can not be construed by the public to be official acts of the Department. (See Sec. 1548, Regulations of the Department.)

Except as directed in his letter of authorization, no Agent shall perform travel at government expense, unless specially authorized by the Survey.

An Agent will be assigned to a definite district and will confine his operations to that district unless specifically assigned to duties outside his district, but he may travel in territory contiguous to his district when violations are being committed or if the pursuit of a violator requires him to enter such contiguous territory.

When an Agent operates in a district assigned to another, either on special instructions or as a necessary incident to the conduct of his work, a copy of any letter or report to the Survey on investigations made or affecting persons apprehended violating the law should be furnished the Survey for the information of the Agent in whose district he has been operating.

It is the duty of an Agent to familiarize himself with migratory-bird and hunting conditions in his district, especially in those sections where the law is most frequently violated. Important hunting sections should be patrolled as frequently as the Agent's allotment for travel expenses will permit and when good reasons exist for his believing that conditions require his presence.

An Agent must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding persons, and open channels for information concerning those things of which he ought to get early knowledge.

10. Procedure--Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witness for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonable to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had." This section relates to natural persons and does not apply to corporations, which will be proceeded against as hereinafter mentioned.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings, it is preferable for an Agent to take an arrested offender before the nearest United States commissioner for hearing, or to apply to the United States commissioner for search warrants, warrants of arrest, or other process needed in the enforcement of the Federal game laws.

Officials named in said Section 1014 customarily follow the practice in State courts. Agents, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by any of the State or municipal officials referred to in Sec. 1014 R. S. for Federal violations they must be guided by the provisions of State laws relating to the serving of such writs.

11. Corporations:-Corporations can not be prosecuted in the same manner as are individuals. In a case against a corporation, an Agent will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Survey with a report of the case. In cases involving firms, co-partnerships, or corporations, special care should be taken to ascertain the full names and addresses of all the partners of a firm or co-partnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

12. Confessions:-A confession not made in open court can not be relied upon to obtain a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration of a person that he has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. As defendants frequently deny their confessions when confronted by them in court, it is important that Agents procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the person making the confession can be taken immediately before the court and there pleads guilty. In such cases, the Agent should consult the United States attorney who, no doubt, will be willing to expedite the prosecution. It is proper for an Agent to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the Agent should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

13. Prosecution after conviction in State court:-It is a fundamental principle that where the same act constitutes a distinct offense against each of several sovereignties, a prosecution by one does not bar per se a prosecution by the other. An act, therefore, which is an offense against a State and against the United States may be punished by both, and a plea of former jeopardy in a State court will not be a bar to a prosecution in the Federal court. There is nothing in the Migratory-Bird Treaty Act which makes the jurisdiction of the United States in the premises exclusive and the jurisdiction of the United States courts is not exclusive unless there are found elsewhere in the legislation of Congress provisions of clear and unmistakable import taking away the

jurisdiction of the courts of the State.

People vs. Welch, 141 New York, 266.
U. S. vs. Cruikshank, 92 U. S. 542.
U. S. vs. Barnhart, 22 Fed., 285.

In writing the opinion in the case against Cruikshank, Chief Justice White said:

"The people of the United States resident within any State are subject to two governments; one State and the other National; but there need not be any conflict between the two. The power which the one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amendable to both jurisdictions for one and the same act***. This does not, however, necessarily imply that the two governments possess powers in common or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereigns and claims protection from both. The citizen can not complain because he has voluntarily submitted himself to such form of government. He owes allegiance to the two departments, so to speak, and, within their respective spheres, must pay the penalties which each exacts for disobedience to its laws. In return he can demand protection from each within its own jurisdiction."

While there can be no doubt about the right to prosecute in Federal court a person who has been convicted in a State tribunal for the commission of the same act, the courts are loath to impose a second punishment where adequate punishment has already been meted out to the offender.

It has been, and no doubt will continue to be, the policy of the Bureau to refrain from reporting for prosecution in the Federal court violations of the Migratory-Bird Treaty Act where the accused has already been convicted and adequately fined in State court for the commission of the same act. Only in exceptional cases where the enormity of the offense or the inadequacy of the punishment inflicted in a State tribunal justifies, will the Bureau recommend that an accused person be further prosecuted in the Federal court.

In forwarding to the Bureau cases in which the accused has already been prosecuted in a State court, you should furnish not only good and sufficient reasons to warrant a further prosecution in a Federal court in case such a prosecution is recommended by you, but a full statement as to the action already taken in State court against the accused.

14. Cooperation with State Authorities--Cooperation on the part of the public, and particularly on the part of State and municipal officials, is highly desirable and will serve to assist in bringing about proper and effective enforcement of the Federal game laws. These officials in the various branches of State and municipal governments are all in position to render invaluable assistance. A Game Agent should earn the confidence and respect of all such officers and of the public in furtherance of such cooperation.

Evidence of violations committed contrary to both Federal and State laws should ordinarily first be transmitted to the Survey for consideration, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for action.

All reports relating to the illegal interstate shipment of live animals or the dead bodies of game animals, or parts thereof, or skins of fur animals, should first be submitted to the Survey. This material will be examined, classified, carded, and such as is desirable to turn over to the States will then be forwarded from the Washington office either direct or through an Agent or Regional Director to the States interested.

Agents should make every effort consistent with the discharge of their duties in the enforcement of the Federal law to obtain evidence of State violations, and in addition to transmitting the evidence to the proper State authority in proper instances as herein outlined, should report to the Survey all such cases, including final disposition in State court. These reports are essential to enable the Survey to keep a complete record of total cooperation extended the several States in the enforcement of their game laws.

15. Affidavits--Affidavits respecting game law violations must be carefully prepared and should contain a clear and concise statement of the facts constituting the offense within the personal knowledge of the affiant. They must show the place where (town, city, or post office, and county and State), and the exact date when (month, day, and year) the violation occurred. An affidavit indicating that an offense occurred "on or about" a certain date is not sufficient. Hearsay evidence, irrelevant matter, and facts that may be used by way of defense should be omitted from the affidavit but, for the information of the Survey, they should be stated in a report or letter, in duplicate, accompanying the affidavit.

Under a general ruling of the Federal Court of Appeals for the Eighth Circuit, affidavits for use in Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming must describe with particularity and certainty the exact place where an offense was committed.

A separate affidavit should be furnished for each individual violator, even where two or more persons are apprehended at the same time. Ordinarily, but not in all instances, duplicates of the originals properly sworn to will be acceptable where two or more persons are involved.

When practicable, witness affidavits should be sworn to before a United States Game Management Agent or Deputy U. S. Game Management Agent who has been authorized by the Secretary of Agriculture under the provisions of the Act of Congress of January 31, 1925 (43 Stat. 803), to administer oaths (the Department seal will be affixed to such affidavits when received in the Survey); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall be paid no fee for administering the oath, as they are paid their fees on accounts rendered to the Department of Justice. With regard to all affidavits sworn to before any officer other than our employees, care should be exercised to see that the seal of the attesting officer is properly affixed to the affidavit.

If such an officer is not available, and it is necessary that an affidavit be sworn to before a notary public or justice of the peace having a seal, care should be exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will then be necessary to have affixed to the affidavit the county clerk's certificate of authentication. An Agent may claim reimbursement in his account for fees thus paid to a notary, a justice of the peace, or a county clerk. When expense is involved in obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment. Where the Agent or Deputy has been authorized to administer oaths the affidavit should be sworn to before him.

It is the better practice to have witness affidavits executed before one or the other of the officials referred to in next to the preceding paragraph. However, it is not necessary that all of the affidavits relating to a particular case be sworn to before them, but in each case there should be at least one witness affidavit relating to the facts executed before such officer. It has been held that an arrest under a Federal warrant, based on affidavits verified before a notary public is in violation of the Fourth Amendment to the Constitution. Although the decision referred to involved a somewhat different form of information than used in MBTA cases, it appears that an information based upon affidavits made before a notary public may also be open to the same objection.

(1) A witness affidavit is no place for reference to an offender's personal character or standing. A person of unblemished character and repute may be as guilty of a violation of the game laws as the vilest wretch. Ordinarily, in game cases, character or reputation can throw little light upon guilt or innocence on a specific charge of violation, and if of any significance can weigh only with the court in imposing sentence, not with us as prosecutors.

An affidavit to be used in a prosecution under our game laws is customarily confined to a direct statement of facts as to the nature of the offense, the time and place where it occurred, and circumstances connected therewith, with such statements of conversations with the accused in relation to the offense charged as may have transpired.

Often, however, it is helpful to the Bureau to know anything definite about the character and reputation of a person accused of a violation of the law. But such information ought to be furnished the Bureau in the Agent's report of the case, not in the affidavits.

As to previous conviction of the offender for violation of game laws, if the affiant can, with precision, state the nature of the charge in the previous conviction and the time and place of conviction, such may appropriately be included in an affidavit; otherwise the information should be furnished the Survey in letter form when submitting evidence as to a particular offense.

As to stating time of offense in witness affidavits, it is important for you to bear in mind always that where possible the exact time, whether it be the day or time of the day, should be stated with exactness. But occasionally it will be impossible for the affiant to state the exact day or time of the day.

(2) Whether in expressing the time when an offense under Federal law was committed it is permissible to allege the time as "on or about" a certain date or a certain hour, wholly depends upon the nature of the offense. If the offense is one in which time plays no part, or as usually said "in which time is not of the essence of the offense", it is permissible, though bad practice, in the Federal courts to allege the date of the offense, if not exactly known, as "on or about" a date stated. Thus, as counterfeiting is an offense no matter when the counterfeiting takes place commission of the offense may be alleged as "on or about" a specified date, in a specified month of a specified year.

In those cases, like the counterfeiting illustration, for examples, the sale of migratory birds or the killing of wood ducks, where time is not of the essence of the offense, sale and killing being prohibited at all times, it would be permissible to allege that the sale was made or the killing done "on or about" a specified date, but the affiant, in an affidavit covering these offenses should, to be more definite, allege the time as, for example, "on or about the first day of January, 1937, the exact day being to this affiant unknown, but a day subsequent to the 20th day of December, 1936, and prior to the 10th day of January, 1937." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time of the offense may be stated somewhat like this -- "that on or about the first day of January, 1937, I can not say exactly what day, but it was between December 20, 1936, and January 10, 1937, John Doe sold to me (or to Richard Roe, as the case may be) two wild pintail ducks, (or killed two wood ducks)" etc., or words to the same effect, no matter how framed to fit into the usual informal affidavits.

But in those migratory bird cases involving hunting in closed season, time is of the essence of the offense, for it is no offense to hunt in the open season by means not prohibited. Therefore, the date alleged in an affidavit should clearly appear as a date within the closed season and it would not be sufficient merely to allege "on or about" a specified date, for the "about" might run the time into the open season

and therefore leave it uncertain whether the hunting occurred in the open or closed season.

In such cases, if the affiant is unable to fix the definite date of the offense, and, for illustration, the open season is September 15, to November 30, the date of the offense may be alleged in the affidavit as "on or about the first day of September, 1936, the exact day being to this affiant unknown, but a day subsequent to August 20 and prior to September 15, 1936, and within the closed season established by Federal Regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be expressed something like this -- "that on or about the first day of September, 1936, I can not say exactly what day, but it was between August 20 and September 15, 1936, John Doe was hunting mourning doves" etc., or words to the same effect no matter how framed to fit into the usual informal affidavits.

Cases involving possession of migratory game birds furnish a good illustration of the inadmissibility of the use of such a term as "on or about" December 12, 1936. Possession of migratory game birds is permitted by the Federal regulations for ten days succeeding the close of the open season, under certain conditions, and therefore time is of the essence of the offense. Assuming the open season to end November 30, possession would be permissible until December 10. If an affidavit should allege possession "on or about December 12, 1936", it could not be determined from the face of the affidavit whether the actual date of the possession was December 10, which would be legal, or December 12, which would be illegal, and so such an affidavit would be too indefinite for the purpose of prosecution.

So, in such a case, the time of the offense should be alleged as "on or about the twelfth day of December, 1936, the exact day being to this affiant unknown, but a day subsequent to December 10, and prior to December 15, 1936, and within the time prohibited by Federal regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be stated something like this -- "that on or about the twelfth day of December, 1936, I can not say exactly what day, but it was after December 10, and before December 15, 1936, John Doe had in his possession ten mourning doves", etc., or words to the same effect, no matter how framed to fit into the usual informal affidavit.

(3) What has been said with reference to affidavits as to hunting in closed season applies with greater force to affidavits as to hunting before 7 a. m. or after sunset. As the time of day in such cases is of the very essence of the offense, it is necessary to allege the time with considerable precision. Assuming that sunset on say September 11, 1936, is at five o'clock, it would not be sufficient to allege in an affidavit that the offense occurred "at or about 5:40 p.m. on the first day of September, 1936.

In submitting such cases the time may be stated as after five o'clock and before 5:30 o'clock, antemeridian, of said day to wit, 5:15

o'clock, antemeridian, John Doe was hunting mourning doves", etc., or if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made the time of the offense may be alleged somewhat like this -- "that after sunset on the first day of September, 1936, I can not state the exact time, but it was after 5:30 and before 6:00 o'clock p. m., that day, John Doe was hunting mourning doves", etc.

In the foregoing illustrations, the important point to bear in mind is that if the affiant can not fix the exact date or hour, he should fix it with reference to two other dates or hours so as to show that the time, although not exactly established, is within a time not permitted by regulations.

The dates and hours employed in the foregoing illustrations are simply examples intended to serve as suggestions to the Agent as to how to express the time of the offense, leaving him to fix the inclusive dates as circumstances require or warrant.

Merely as information for the Agents, it may be stated that grand juries in indictments and U. S. Attorneys in informations, properly may allege a specific date of violation, even though that date be not accurate, so long as it is a date that shows the offense to have been committed before the statute of limitations would bar a prosecution. All the Government needs to do in a prosecution on such an indictment or information is to prove that the offense occurred prior to the expiration of the period of limitation for such prosecutions.

In the preparation of all cases an Agent should obtain not only all the facts that are to be relied upon to prosecute successfully the accused, but also any facts that may be used by the accused by way of defense or in mitigation of punishment. Facts or matter that may be used in defense of the accused or in mitigation of punishment should not, however, be included in any affidavit that is a part of the Government's case against the accused, but should be furnished to the Bureau in a separate report, which should accompany the report of violation.

Agents should always make out the strongest case possible against the accused and submit the evidence in the form of affidavits signed by the witnesses to each violation: or, if it is impossible to obtain the affidavits of witnesses whose names or addresses are obtainable, the Bureau should be furnished with a full report showing the facts which it is claimed are within the knowledge of each of the witnesses and which facts they will testify to if subpoenaed as witnesses.

The facts contained in an affidavit should be stated in the first person singular, and conclusions or opinions of the witnesses should be omitted. Specimen affidavits follow:

S P E C I M E N A F F I D A V I T.

UNITED STATES OF AMERICA,)
State of)
County of) ss
City of)

On this _____ day of _____, 1936, personally appeared before me the undersigned John Jones, who, by me being first duly sworn, deposes and says: I reside at 122 Bleeker Street, in the City of Richmond, State of Virginia, and am a (Deputy) United States Game Management Agent employed by the United States Department of Agriculture, Washington, D. C.

Deponent further says that while patrolling the marsh known as Dyke Marsh, in Fairfax County, Virginia, on February 15, 1936, with Fred Jones, I saw two men in a skiff about fifty yards from me, one paddling and the other sitting forward with a gun across his knees. I stopped and watched them, and while looking at them I saw the man with the gun raise the gun and fire two shots into a small bunch of wild ducks that flew over them, and saw three wild ducks fall into the water. The men paddled a short distance and picked the wild ducks out of the water. I then walked on ahead to where I judged they would land, and waited for them. They were in plain sight all the while. When they came ashore I recognized the man who did the shooting as John Doe, of Alexandria, Va. The man who paddled the skiff was Richard Roe, also of Alexandria. I said to John Doe "John, didn't you know this was the close season on wild ducks?" He said, "Yes, but I didn't stop to think about it." I said, "I won't arrest you now, but I'll have to take your birds and report a violation against you." He said, "All right--here they are; you know where to find me." I know both of the men personally, and for this reason did not arrest them; they are both residents of Alexandria, Va., and are employed at the shipyard. I placed the three wild ducks in cold storage with the Economy Ice Company at Alexandria, Va.

JOHN JONES.

Subscribed and sworn to before me this _____ day of _____, 1936.

UNITED STATES COMMISSIONER,
Eastern District of Virginia.

SEAL

(Always give full name of violator)

S P E C I M E N . A F F I D A V I T:

UNITED STATES OF AMERICA.)
State of _____)
County of _____) ss
City of _____)

On this _____ day of _____, 1936, personally appeared before me the undersigned, John Jones, who, by me being first duly sworn deposes and says: I reside at 122 Bleeker Street, Richmond, State of Virginia, and am a United States Game Management Agent, employed by the United States Department of Agriculture, Washington, D. C.

Deponent further says that on March 1, 1936, in company with Mr. John Doe, I entered the store of Mrs. Richard Roe, 12 Main Street, Richmond, Va. A saleslady, whose name I afterwards learned was Susan Smith, approached us. Mr. Doe said "I am returning home in a day or so, and would like to take to my wife a nice plume as a souvenir -- have you any for sale?" The lady said "Yes" and showed several. Mr. Doe said "I don't like those; haven't you some pretty egret plumes?" The lady went to another part of the store and returned with a box from which she took four bunches of plumes and remarked that they were all they had, as they were hard to get. Mr. Doe picked up one and examined it, the lady continuing to explain how scarce they were. She said "These four bunches are all we have; that one you have is \$5; here is a larger and better one that we ask \$12.50 for, but as we want to close them out I can let you have it for \$10." Mr. Doe looked at it and finally said he was undecided, but would think it over and look around a bit more and would probably call later in the day. The lady started to gather them up when I said "Wait a minute - is Mrs. Roe in?" She said "Yes", and called to her. When Mrs. Roe came up I said "Mrs. Roe, I am a United States Game Management Agent. Your clerk here has offered to sell these aigrettes to Mr. Doe, and I will have to seize these aigrettes and report a case against you for offering to sell these aigrettes in violation of the Migratory-Bird Treaty Act." She said "I only had those four left and hoped I could get rid of them." I seized the four bunches and gave her a memorandum receipt for them.

JOHN JONES

Subscribed and sworn to before me this _____ day of _____, 1936.

UNITED STATES COMMISSIONER
Eastern District of Virginia.

SEAL

16. Searches and Seizures:--As a general rule Agents are without authority to conduct a search for contraband migratory birds, or illegally transported wild animals or parts thereof, unless armed with a search warrant. Contraband birds found in cold storage or elsewhere during the close season may be seized and held for use as evidence, if the Agent has gained entrance into the plant through permission of the owner or superintendent in charge (someone in authority) and violations of the Migratory-Bird Treaty Act or other Federal laws are discovered. When an Agent is in possession of sufficient evidence indicating that birds or game are illegally possessed and it becomes necessary to have a search warrant before the evidence can be obtained, application for such warrant should be made to the United States commissioner or Federal judge. The application for a search warrant should describe with particularity the specific establishment, room, building, dwelling, etc., that it is desired to search. No attempt should be made to obtain a search warrant for a dwelling, except on the strongest possible evidence indicating a substantial violation. It is necessary, of course, to submit substantial evidence to justify the issuance of a search warrant for any building or place of business, but the evidence on which to search a dwelling should be practical certainty.

After a search warrant is obtained, it must be served by the officer mentioned in the warrant and be read to the owner or occupant of the premises to be searched. When a search warrant is directed to an Agent he will conduct the search in a thorough and courteous manner, with a demand in the name of the law to permit the search authorized but must confine his operations to the particular room, part of the establishment, etc., set forth in the search warrant. The premises should be left in the same condition as that in which they were found. Any migratory birds, or wild animals, or parts thereof, evidencing a violation discovered during the search, should be immediately seized, the officer leaving a receipt for the property taken. The evidence obtained should be carefully marked and preserved for use in any further proceedings in the matter. At the completion of the search the warrant should be returned to the United States commissioner with notation thereon as to the action taken. A detailed report of action taken under a search warrant should be furnished the Survey.

17. Unlawful Searches:--The Act of August 27, 1935, (49 Stat. 877), provides as follows:

"Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdeameanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment; Provided, that

nothing herein contained shall apply to any officer, agent, or employee of the United States serving a warrant of arrest, or arresting or attempting to arrest any person committing or attempting to commit an offense in the presence of such officer, agent, or employee, or who has committed, or who is suspected on reasonable grounds of having committed, a felony."

18. Search of Automobile:--An opinion of the Solicitor on this very important subject is quoted in full:

"Consideration has been given to the question asked in your letter of April 11, 1934, namely, whether your Game Protectors, engaged in the enforcement of the Migratory Bird Treaty Act, have authority, upon probable cause, without a warrant, to search automobiles believed to be used in the illicit disposition of ducks, and it is my opinion that the question, as you have stated it, must be answered in the affirmative, chiefly because of the assumption therein that the officer named, in making the search without a warrant, is acting upon probable cause, that is, upon a well founded belief that the vehicles to be searched are engaged in a violation of the law.

"The authority to make such a seizure, that is, without warrant and upon probable cause, is not to be found in Sec. 5, of the Migratory Bird Treaty Act to which you refer, for this specifically authorizes the Department employee only, (a) to arrest without warrant, any one violating the Act in his presence; (b) to execute any warrant properly issued; and (c) with a search warrant, to search any place. The right to make such a seizure as you refer to, though not specifically authorized by this section of the Act, is, nevertheless, well established in the common law and needs no statute for its authorization. Although I am satisfied that such a seizure is legal, it is necessary that you should be perfectly clear as to what is meant by "probable cause" in connection with searches and seizures of this kind.

"From the early days of our history, the Courts have guarded most jealously the right of the people, under the Fourth Amendment to the Constitution, "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." It has been well settled that a search and seizure is "unreasonable" if made without a warrant and not upon "probable cause". What the necessary probable cause is, which will justify a search and seizure made without a warrant, has been clearly stated in the case of Carroll vs. U. S., 267 U. S., 132, a leading case on searches and seizures, which, though it specifically involved a search under the prohibition law, is equally applicable, in the principles stated therein, to such a search as is now under consideration. On page 149 of this case, is the following:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon

probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid."

"While the same case (p. 153) shows that, practically from the beginning of the Government, in construing this constitutional guaranty of freedom from unreasonable searches and seizures, there has been recognized a necessary difference between the search of a store or house and the search of a ship or any other quickly moving vehicle, it is made perfectly plain that the requirements of the necessary "probable cause" remain unchanged. On pages 153 and 154, the court says:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

"In further elucidation of the requirements which are necessary to constitute "probable cause" the court (page 161) quotes with approval the following from *Stacey v. Emery*, 97 U. S., 642:

"If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient ... The substance of all the definitions is a reasonable ground for belief in guilt."

"Applying the definitions and explanations thus given of the "probable cause", which is necessary in order that an automobile may be stopped and searched without a warrant, it is obvious that there is no authority to stop and seize every car moving interstate from ducking areas towards markets where possible illegally possessed ducks may be disposed of, merely because of those circumstances. It would be manifestly absurd to say, under the rule laid down in the *Carroll* case (p. 149), that a belief that every automobile "contains that which by law is subject to seizure and destruction," could "reasonably arise" out of the simple fact that the automobile was moving from a ducking area toward a place where such ducks could be disposed of or that such circumstances alone would warrant, to use the expression employed in *Stacey v. Emery* "a man of prudence and caution in believing that the offense had been committed." The Game Protector, in such a case, might indeed

suspect or think it possible that every automobile going out of such an area and moving toward such a market was carrying illicitly possessed birds which were about to be disposed of and that an offense was thus being committed, but such a suspicion would be far from the "probable cause" which the law requires and which must be a reasonable ground for belief in guilt, based on facts known to the arresting officer.

"The zeal of the courts to give protection against search without probable cause may be further illustrated by the principle laid down in the case of Director General vs. Kastenbaum (263 U. S., 25, p. 28). Here it is specifically held that even the proven good faith of the officer in believing that he had probable cause is not sufficient to secure him against a charge of false imprisonment, but that his good faith "must be grounded on facts" within his knowledge which, in the judgment of the court, would make that good faith reasonable.

"In view of the foregoing, and in enlargement of the opinion already expressed, I would advise you that your Game Protectors are not authorized to stop and search persons or cars merely because they are found to be moving out of a ducking area toward a market where disposition could be made of illicitly possessed birds; they may be stopped and searched only when, as the Carroll case puts it, there is known to them as officials, authorized to enforce the Act, probable cause for belief that such person or vehicle is "carrying contraband or illegal merchandise."

"It is most desirable, I know, that the interstate transportation of illegally possessed birds should be stopped, but it would be far worse, in my opinion, for your Game Protectors to employ illegal means in order to secure that desired end."

19. Arrests in General:--An Agent should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If an Agent who acts within the scope of his employment and within his authority is sued on that account, the Department of Justice will be requested to assist in his defense; but, if an Agent knowingly exceeds his authority and gets into difficulties, he must personally arrange for his defense.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. No arrest should be made in trifling or technical cases; but in dealing with such cases great care must be used to avoid the appearance of partiality, and reports of these cases should be forwarded promptly to the Survey. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause an Agent to deviate from his duty of holding violators responsible for their illegal acts.

An Agent may make an arrest when armed with a warrant issued by a Federal court, a United States commissioner, or other officer of competent jurisdiction (see Sec. 1014, R. S., section 7, above), or without a warrant when the offense is committed in the Agent's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the Agent. The details of procedure in making an arrest with warrant and in handling the case after making an arrest without warrant are hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the Agent can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of an Agent, he should inform the accused of his identity and of the reason for making the arrest, and furnish the offender with evidence of his identity and authority, i. e., badge or identification card, if requested under the same conditions as reading of warrant.

When an arrest is made with a warrant, under no circumstances may the accused be released but he must be arraigned before the official who issued the process.

It may be unnecessary at the time the offense is committed to make an arrest when the Agent knows the accused, or has at the time so established the identity of the latter that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused and to be certain identification is positive.

When an immediate arrest is not made no warrant of arrest should be obtained, in usual cases, but the Agent should promptly furnish the Survey with his report of the violation, his affidavit of facts, and the affidavit of other material witnesses. This evidence is then transmitted through proper channels to the United States attorney for the District in which the offense was committed, and forms the basis for the filing of an information.

In case the accused is known to, or his identity has been fully established to the satisfaction of the Agent, it is good practice, as a rule, to make no arrest if the accused will agree to appear voluntarily before a United States commissioner at a specified time and will permit the Agent to take and hold for use as evidence, his gun, ammunition, State hunting license, game, or other article or paraphernalia connected with the violation. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information, as outlined in the preceding paragraph. In such cases the Agent should obtain, if possible, a written confession if the accused is willing voluntarily to make a confession, and, in any event, should obtain a written statement in which

the accused agrees, if it shall be deemed necessary, to appear before a commissioner and consents to the Agent holding the articles connected with the violation for use as evidence. If the accused refuses to give such consent and there is danger that he may escape and the articles mentioned are necessary for use as evidence against him, the Agent should make an immediate arrest and take him before a commissioner, in which event the Agent, of course, would seize such of the above enumerated articles found on or used by the accused as may be needed for evidence and hold them for use at the trial.

It is left to the discretion of an Agent as to when an arrest should be made, as it is often more advantageous not to make an arrest for a violation committed in his presence or view, for when an arrest is made and the accused is taken before a United States commissioner or other magistrate, the Agent necessarily must leave the field of activity. If the section wherein the violation is noted is a trouble zone, or if a number of violations are occurring simultaneously, an arrest immediately advertises his presence in the vicinity, and his chances of continuing his investigations under cover or of returning and apprehending the remaining violators in the area are extremely remote. In some sections it may be expedient to make an arrest, even though an accused has been sufficiently identified to be thereafter apprehended on a warrant, if the violation occurs in a trouble zone or the accused is an habitual game law violator and if an arrest under such conditions would have a salutary effect through the publicity gained by the arraignment. In instances of this nature the Agent's conduct must be governed by the conditions he encounters in the field.

It is not proper to release a person under arrest after making a seizure, and it is always advisable when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the Agent should endeavor to have the offender make a written statement or sign a regular form (after reading it or knowing its contents) showing the nature of the offense for which he has been apprehended, releasing any game seized to a charitable institution, etc., and consenting to the Agent's retaining his gun, ammunition, State hunting license, game, or other evidence connected with the violation, with the understanding that he will meet the Agent in court or before a United States commissioner when notified to appear. The Agent must caution the prisoner that his statement may be used against him in any trial that may result, and should read such statement to him or have him read it before signing.

In other words, when it is planned not to arraign an accused, the Agent should indicate to him that such determination is an accommodation to him, as, if he is taken a considerable distance to the office of a United States Commissioner and held for the action of the Federal Court, he would probably be put to the trouble and expense of furnishing bond, or possibly have to remain over night in jail in the event bond could not be immediately obtained, and have the added expense of paying his transportation expenses back home.

When no arrest is made or it is impracticable or unnecessary to take an accused before the commissioner, he will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the Agent's report and affidavit of facts.

In the matter of seizures, the fact that the accused intends to plead guilty should not determine the course of a warden in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that a warden must have in mind is to obtain sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must also be borne in mind that an accused person may change his mind and plead not guilty at the trial. A warden may seize, in addition to contraband birds, the gun, ammunition, hunting license, or any other articles found on the person of the accused that may tend to establish his identity or guilt.

29. Procedure in Arrests without Warrant:--The usual mode of procedure is here given, though the practice may vary somewhat in different States, making it necessary for an Agent to familiarize himself with the State laws governing court procedure in his district:

When a violation is committed in the presence or view of an Agent he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the Agent and satisfactory arrangements can be made for him to appear before a commissioner or magistrate at a more convenient time in the near future, if such appearance is deemed necessary by the Agent; such an arrangement should be made only when the Agent is satisfied that the offender will so appear, or, in case of his failure to do so, that he can be easily located and arrested thereafter on a warrant.

Whether the accused is arrested with or without warrant, or his offense is merely noted by the Agent, a report of the case together with affidavits of the Agent and witnesses, if any, should be forwarded promptly to the Survey.

When the offender under arrest without warrant is brought before the commissioner or other magistrate, a complaint should be prepared, sworn to before, and filed with, the official, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel, the accused must plead to the charge either "guilty" or "not guilty". He may waive or demand an examination. Each step in the proceeding will be recorded in his docket by the commissioner or magistrate.

In case of a plea of "guilty", or if examination is waived, the commissioner or magistrate will commit the accused, fix bail immediately, and require him to give bond for his appearance at the next term of the

United States court in the district in which the offense was committed. If an examination is demanded, the hearing may be at once, or an adjournment had to be a convenient date. In case of an adjournment the accused should be committed, bail fixed by the commissioner or magistrate, and bond required for appearance at the examination. If the bond is not given, the Agent should take the accused to the county or city jail designated in the warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailer as his authority to hold the prisoner, and the original warrant must be returned to the proper court or officer, with the Agent's "return" thereon.

The Agent and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

The commissioner or magistrate, in an examination of an offender, to be authorized to commit need not be convinced beyond a reasonable doubt of his guilt, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused. If the evidence shows the existence of probable cause for believing the accused to be guilty, the commissioner or magistrate should commit him for the action of the United States court in the district where the offense was committed, fix bail, and require bond for appearance in such court. In default of bail being given, the accused should be confined in the jail designated in the warrant of commitment.

The following question raised by an Agent and the opinion thereon rendered by the Solicitor, regarding the procedure and arraignment of accused persons before United States Commissioners when charged with an infraction of the Migratory-Bird Treaty Act under certain circumstances are quoted for your information:

"If I am on the Illinois bank of the Ohio River and see a violation of the Act committed on the Ohio River (the Ohio River is entirely within the jurisdiction of Kentucky), and apprehend the violator as he lands on the shores of Illinois, and the violator is not known to me, and can not satisfactorily convince me that he can be apprehended later, what am I going to do about it?"

The Act under which the various United States Game Agents operate is the Migratory-Bird Treaty Act approved July 3, 1918, 40 Stat., 755, Section 5, which reads as follows:

"Sec. 5. That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. ***"

The provision relative to arrests is not restricted, but runs throughout the United States. Consequently, Federal game agents whose work under their appointments is not restricted to any district or section of the country but is general in character, can arrest without a warrant anyone anywhere in the United States for a violation of this Act committed in their presence. The powers given Federal game agents under this Section are much broader than those granted United States marshals, in that the marshals' power to make arrests for acts committed in their presence is confined to the respective districts for which they are appointed (Sec. 788 Revised Statutes).

After a game agent has made an arrest under circumstances similar to the one stated ***, he should immediately take the offender to an officer or court having "competent jurisdiction" for examination or trial.

Section 1014, of the Revised Statutes provides:

"Sec. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a Supreme or Superior Court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

The office of Commissioner of the Circuit Court was abolished and the new office of United States Commissioner was created under the Act approved May 28, 1926, (29 Stat., 184). The said United States Commissioners were given all power previously exercised by the Commissioners of Circuit Courts, except as to appointment and fees, and all acts and parts of acts which were applicable to Commissioners of Circuit Courts are likewise applicable to the United States Commissioners.

The officer having "competent jurisdiction" under the provisions of this Act would be the United States Commissioner sitting in the Federal district in which the offender is apprehended (U. S. v. Almeida, 2 Wheeler's cr. Cas. 576), which in the instant case would be within the State of Illinois.

21. Procedure in Arrests with Warrant:--When an offense is not committed in his presence or within his view, the Agent should ascertain the material facts and report the case promptly to the Survey with affidavits of the witnesses. If the evidence thus submitted tends to establish that a crime has been committed, it will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person, and in such cases an Agent should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding an arrest.

To obtain a warrant it is necessary to comply with certain conditions in order to give the commissioner or magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before and filed with the commissioner or magistrate.

The complaint should be carefully drawn, showing in the most direct language possible who is alleged to have committed the violation, the time when and the place where the alleged violation was committed, and what acts constituted the offense; and that the acts stated were contrary to the particular Federal statute of which the violation is charged.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of the offense, the commissioner or other magistrate should issue the necessary warrant for the arrest of the accused person, as specifically authorized in Section 5, of the Migratory-Bird Treaty Act, Section 202 of the Lacey Act as amended June 15, 1935, Section 6, of the Migratory-Bird Hunting Stamp Act, or as provided in Section 1014, of the Revised Statutes.

The warrant for the arrest of the accused may be executed by any Agent or United States Deputy Game Warden to whom it may be directed, or it may be directed to a United States marshal or his deputy. The execution of the warrant consists of taking into custody the person named therein. The Agent should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before an Agent serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

22. Expenses for Executing Process:--When a warrant of arrest or a search warrant issued by a court or officer of competent jurisdiction in connection with violations of the Federal game laws is executed by a United States Game Management Agent or one of his deputies,

the expenses of the Agent and of any prisoner prior to his commitment are a charge against funds allotted under his Letter of Authority for carrying out the provisions of the specific act that has been violated.

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by an Agent, the expenses of the marshal and any prisoner are a charge against the appropriation for the Department of Justice, and the expenses of the Agent are a charge against the appropriation for the enforcement of the particular act involved.

The expenses incurred in executing a warrant of commitment, whether by a marshal or an Agent, are chargeable against the appropriation for the Department of Justice. In case a warrant of commitment is executed by an Agent, his expense account should be rendered to the marshal for approval and placing in the way of payment.

When a warrant of any class is executed by a marshal, the Agent must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor from the Survey or the Department of Agriculture.

23. Memoranda of Observations:--All Game Agents, and all Federal Deputy Wardens when assigned to active duty, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in mind, full and complete notes must be entered in the diary to record observations of the actions of the accused, and any contraband birds, wild animals, guns, or other articles seized must be marked for identification as evidence. The notes must contain the following data:

(1) Full name and address of the accused and any distinguishing marks or characteristics that will aid in his future identification, should he not be well known to the Agent, such as deformity, scars, missing teeth, or fingers, etc.; (2) date and time of day when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds, wild animals, or parts thereof, or hunting equipment seized; (5) statements made by accused when arrested or when seizure was made; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds, reference should be made to the distance between the Agent or Deputy Warden and the accused at the time of the commission of the deed; and, if it occurred at night, the exact time of its commission should be given as shown by the watch of the Agent or Deputy, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the memory

of the officer when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter. In order that there may be no future question, when an Agent or Deputy Warden in testifying may be compelled to refer to his original notes, as to the time when data in connection with an alleged offense were recorded, he should note at the end of his memorandum statement "These data recorded this _____ day of _____" and sign or initial it.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as if it is to be contested, and leave nothing undone that should be attended to in order to be able to prove the guilt of the accused when brought to trial.

24. Preservation of Exhibits:--Contraband birds and wild animals or parts thereof must be seized immediately by an Agent and preserved, if possible, in their original condition for future use as evidence. Such seizures must be marked or tagged forthwith for identification by the Agent making the seizure, with the following information:

(1) Date of seizure; (2) place of seizure; (3) full name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) reason for seizure; (7) witnesses present when seizure was made.

When carcasses of seized dead birds or animals are to be preserved for future use as evidence, they should, promptly after being appropriately tagged, be placed in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey; plumage of birds and the skins of fur or other animals should be placed in a package and sealed in such manner that at any time the Agent can swear that the contents of such package are the identical contents that he placed therein, after which it must be safely retained or stored. Whenever possible an Agent should obtain a written agreement from the person from whom birds, animals, plumage, or specimens were seized authorizing them to be turned over to the Biological Survey for disposition for scientific, educational, or food purposes.

In case of furs, particularly valuable shipments, and wild animals and parts thereof, it will be necessary to retain them for disposition by the court upon conclusion of the case. However, if the accused is willing to consent thereto, and signs a release therefor, the bodies of seized animals or game birds should be donated to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates; migratory insectivorous or nongame birds or their plumage should be given to educational or scientific institutions. The Agent should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of

birds or plumage thus donated and transmit such receipt to the Survey. In no case should such seized articles be given to individuals or public officials for personal use. (See below for more specific instructions regarding seizure of furs under the Lacey Act.) No seized furs should be disposed of.

Where a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the Agent should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of them is obtained from the violator, they may be preserved by cutting open the abdomen and placing them in an ordinary fruit jar filled with a 10 percent solution of formalin. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or water-proof ink should be used in marking tags. After remaining in the jar about a week they can be taken out and the carcasses dried, after which they will practically mummify and keep indefinitely.

Agents should also obtain, whenever possible, a release to the Survey of any live birds or animals that may be seized. Such birds or animals must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Survey directing that they be disposed of by liberation or otherwise.

In cases involving the killing or possession of migratory game birds in excess of the daily bag or possession limit, or shipment during a calendar week in excess of the number authorized by the Federal regulations, all the birds killed, possessed or shipped should be seized and handled in accordance with these instructions.

Unless seized birds, animals, parts thereof, or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the Agent seizing them, and for disposition by the court, and should not be forwarded to the Survey, except in those doubtful cases when it is necessary to have the specimens or plumes identified.

When convictions are obtained, or a case is finally disposed of in Federal court, unless otherwise directed by the court or the United States attorney, all birds or carcasses of animals fit for human food should be promptly donated to a public charitable institution or public hospital. If unfit for food and of no scientific value, they should be destroyed. The Survey should be informed of the final disposition of seizures.

The court will probably in each case direct disposition to be made of furs. (See paragraph 34, Lacey Act.)

Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the Agent in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked, tagged, and placed where they will not deteriorate or be lost or stolen, so that they will be available at the trial and can be returned to the accused when the case has been terminated.

If for any reason an exhibit is to be placed outside the control or possession of the Agent, he must attach an indestructible marker thereon, so that when it is returned to him he will be able to identify it as the one he had previously in his possession.

The seizure of automobiles, airplanes, vehicles, boats, or other transportation facilities used in the illegal transportation of furs, etc., under the Lacey Act is not contemplated.

25. Birds in Storage:--It is desired to keep down to a minimum the expenses incident to stored birds, carcasses of animals, or parts thereof. The Survey can not be held accountable for unpaid storage charges on seized birds, carcasses of animals, or parts thereof at the time of such seizure. Only such storage charges as accrue on and after the date such seizures are made can be paid by the Survey. Accounts covering storage charges should not be allowed to extend from one fiscal year to another, but all accounts should be rendered promptly at the close of the fiscal year for charges accruing during that period.

26. Purchase of Birds or Plumage as Evidence:--It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, because of the fact that it is unlawful to offer for sale, or to sell, migratory birds or parts thereof. The law authorizes the immediate seizure of birds and parts thereof that have been offered for sale. Agents, therefore, must not, except in rare cases and after conferring with U. S. Attorney to obtain approval, purchase birds or parts thereof to establish violations, but should immediately seize and hold for use as evidence all such birds or plumage they find offered for sale. Birds and plumage so seized may be disposed of to institutions in the same manner as outlined in the second paragraph of Section 24, on "Preservation of Exhibits."

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence of sale against him, even though evidence of a sale violation can be obtained in no other way, holding such cases to be "induced violations." In other jurisdictions the judges and United States attorneys hold a contrary opinion. Game Agents should, therefore, become familiar with the attitude of the Federal judge and United States attorney in their respective districts on this question.

27. Possession of Birds and Plumage Acquired before and since Treaty Act Became Effective--The provisions of Section 2 of the Migratory-Bird Treaty Act, prohibiting the possession of migratory birds, or parts thereof, and their nests and eggs, are sufficiently comprehensive, in the opinion of the Bureau, to include the possession of the same, whether acquired before or since July 3, 1918, the date on which the Act became effective. It is not the policy of the Bureau, however, to enforce this construction of the statute where a bona fide acquisition of such birds, etc., occurred prior to July 3, 1918, and no attempt to sell them has been made since such date.

The provisions of Section 2, which make it unlawful to OFFER FOR SALE, SELL, OFFER TO PURCHASE, PURCHASE, etc., apply to migratory birds or parts thereof, without regard to the time when the ownership or possession was acquired.

A person, therefore, who owned and possessed migratory birds or parts thereof, and their nests and eggs, as above outlined, prior to July 3, 1918, will not be disturbed in the possession thereof by the Bureau so long as he retains this possession for his own use, and will not be required to obtain either Federal scientific or propagating permit to legalize such possession, but the Bureau will be insistent that such birds or parts thereof, and their nests and eggs, shall not be sold, offered for sale, or otherwise trafficked in without a permit.

When live or mounted specimens of migratory birds or parts thereof, and the nests and eggs of migratory birds, are found in the possession of any person, it is very important to determine (1) the date when ownership and possession thereof were acquired, and (2) whether any overt act forbidden by the Treaty Act, such as the sale or the offer for sale of the birds or parts thereof, their nests and eggs, has been committed since July 3, 1918. If the birds or parts thereof, and their nests and eggs have been sold or offered for sale in violation of the law, the necessary affidavits and reports should be furnished the Bureau.

No seizure should be made, or any action taken other than to report the facts to the Bureau in cases where birds or parts thereof, their nests and eggs, were possessed before July 3, 1918, and there is no substantial evidence showing that the birds or parts thereof or their nests and eggs have been sold or offered for sale in violation of the law; but the birds or parts thereof and their nests or eggs should be seized if substantial evidence is obtained of such sale or offer for sale.

28. Indian Reservations--Indians are not privileged to hunt contrary to the Migratory Bird Treaty Act regulations or hunt without complying with the provisions of the Migratory Bird Hunting Stamp Act either on or off their reservations and field personnel will see that these statutes are obeyed.

Paragraph 1813 of the Department Regulations requires that representatives of the Department visiting Indian reservations must obtain the consent of the superintendent before doing so. Therefore Agents will report to the superintendent when they visit a reservation and advise him that they are there to make investigations with a view to ascertaining whether the

Federal laws are being complied with by the Indians and whites alike. If it is not possible to make positive identification of an Indian caught violating the Federal game laws so that he may thereafter be apprehended on a warrant then he may be arrested and arraigned before the nearest United States Commissioner for examination. A prompt report accompanied with affidavits regarding individuals apprehended committing violations on Indian reservations should be sent to the Survey.

If an Indian wishes to enter a plea of guilty, and Federal Court is in session, or about to convene, and the United States Attorney approves, he may be taken into Federal Court at that time.

Whenever possible field officers will visit superintendents in charge of Indian Reservations, acquaint them with the provisions of the Federal laws, see that they receive copies of regulations together with copies of open season posters, and seek their aid in seeing that the laws are observed on such reservation by everyone, including the Indians.

29. Indians Amenable to Law:--A memorandum by the Commissioner of Indian Affairs, on March 17, 1936, to Superintendents of Indian Reservations under the jurisdiction of that office is as follows:

"The Bureau of the Biological Survey, Department of Agriculture, has requested that the Migratory Bird Treaty Act and the Federal laws relating to the protection of wildlife be brought to the attention of Indian reservation Superintendents, with special reference to the seasons, bag limits, species of birds and other restrictions of the Migratory Bird Treaty Act and its regulations.

"Under the Solicitor's opinion of June 15, 1934, it was held that the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. L. 755) is binding upon the Indians as well as others, irrespective of where the migratory birds may be found. It is suggested therefore, that you become familiar with the Migratory Bird Treaty Act Regulations, 1935, and the Text of Federal Laws relating to the protection of wildlife, enclosed herewith, making conscientious effort to see that they are obeyed.

"This is to be discussed by you with the tribal council or other representative tribal groups and employees for the purpose of their information and dissemination thereof generally."

30. Examination of Express Records:--Game Agents should experience little difficulty in making examination of express records, as the vice-president of the American Railway Express Company under date of Sept. 30, 1920, advised the operating vice-presidents that the general rules and instructions of the company authorized agents to furnish officers and agents of the Federal government information regarding transportation of property in interstate commerce.

Agents should be careful not to antagonize agents in the event that their authority is questioned. If an agent of the express company unreasonably refuses to give you an opportunity to examine express records or to give assistance to determine whether game or fur in possession

If you have reason to believe that any wild animal or bird or part thereof is being illegally shipped in interstate commerce, you should promptly report the facts to the Biological Survey.

The practice of the local agents of the express company is to forward within a few days to the district auditing office billings covering outgoing shipments, and in a general examination of express records in a given region it is necessary to visit the main office for the division from which the shipment was made to conduct such work. As several States are usually included in each division, it is necessary in most instances to have the Agents in the field report on points from which they desire records examined and the Survey can arrange with the Agent in the district in which the headquarters of the division office is located to make a general inspection once or twice a year or as occasion demands and obtain affidavits of express officials and copies of waybills covering shipments under investigation.

31. Mail Shipments:-The Post Office Department issued the following amendment to Section 593, of the Postal Laws and Regulations, effective May 1, 1936:

"1. Postmasters shall not accept for mailing any parcel containing the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any such birds, which have been killed or taken or are offered for shipment contrary to any law of the United States or of any State, Territory, District of Columbia, or foreign country, or State, Province, or other subdivision thereof: Provided, however, That the foregoing shall not be construed to prevent the acceptance for mailing of the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any wild birds, killed or taken during the season when the same may be lawfully killed or taken and the shipment of which is not prohibited by law in the State, Territory, District, or foreign country, in which the same are killed or taken or offered for shipment.

"2. Parcels containing the dead bodies of any game animals, or parts thereof, including furs, skins, skulls, or meat; or of any game or wild birds, or parts thereof, including skins or plumage, or the eggs of any such birds, may be admitted to the mails only when plainly and clearly marked or labeled on the outside thereof with the names and addresses of the shipper and consignee (addressee), and with an accurate statement showing by number and kind the contents thereof: Provided, however, That fresh game in any form may be accepted for transmission only to post offices to which, in the ordinary course of mail, it can be sent without spoiling. (See Sec. 591.)"

32. Construction of Game Laws Governing the Transportation and Importation of Wild Birds -- Native and Foreign:-Section 2, of the Migratory-Bird Treaty Act prohibits the shipment, transportation, etc., of any migratory bird or parts thereof, including the plumage, except as specifically permitted by regulations adopted by the Secretary of Agriculture.

Section 4, of the Act prohibits the interstate shipments, transporation, etc., by any means of any birds (migratory or non-migratory) or parts thereof contrary to the laws of the State in which they were captured, killed, or taken, or from which they were shipped, transported, or carried, and the importation of any birds, etc., captured, killed, transported, etc., contrary to the laws of any Province of Canada and covers the shipment by any means whatever and the shipment of live birds as well as the dead bodies.

A violation of Section 4 is predicated on a violation of a State law or law of a Province in Canada. In other words there can be no violation of Section 4 unless the acts committed were in violation of the law of the State or Province in which the birds were taken or from which they were shipped or transported.

The provisions of Section 2 must not be confused with the provisions of Section 4. Section 2 relates solely to migratory birds, and a violation of this section is not predicated on a violation of State law.

No change was made in Section 241 of the Lacey Act regulating the importation of live wild animals or birds from a foreign country. Violations of this section are not predicated on a violation of the law of any State or any Province or sub-division of a foreign country.

The provisions of Section 243 relate to the marking of packages in which wild animals or birds or the dead bodies or parts thereof or the eggs of birds are contained for interstate or foreign commerce. A violation of Section 243 is not predicated on a violation of State law and this section applies to the marking of packages containing wild animals or birds or parts thereof whether native or foreign species. Shipments by parcel post from one State or country to another are shipments in "interstate or foreign commerce" under Section 243.

Marking packages containing migratory birds or parts thereof is also covered by Section 2, of the Migratory Bird Treaty Act. The regulations provide that any package containing migratory game birds lawfully killed, or propagated waterfowl or parts thereof, or their eggs or specimens of migratory birds for scientific purposes, when transported shall have plainly and conspicuously marked on the outside thereof the name and address of the shipper and consignee and an accurate statement of the number and kind of birds, or eggs contained therein.

The provisions of the Tariff Act prohibit the importation of the plumage and skins of wild birds or parts thereof, including plumage and other parts of wild birds. This law is enforced by officials of the Custom Service and has no relation to the provisions of Section 241 of the Lacey Act relating to the importation of live birds.

33. Fur Inspection:--Agents should regularly visit the large raw-fur receiving houses in their districts with a view to examining records of fur receipts to discover illegal shipments of skins of beavers and

other fur animals. As there is no provision in the Lacey Act compelling fur houses to open their records for inspection, an agent in order to gain access to such records must be very tactful in his dealings with the concerns. Many dealers, however, will exhibit their records. A fur dealer who seems disinclined to extend the courtesy should be advised that his cooperation will aid the Federal Government and the States in efforts to conserve the supply of fur animals, resulting in a better grade of furs reaching the market and at the same time will keep the dealer from being placed in a position of shielding law violators of this character. Such information as appears to cover illegal shipments which it may be advisable to submit to State game departments should be copied on Form Bi-928, and submitted to the Survey, where it will be viewed and then forwarded to the interested States, or to other Agents for investigation.

34. Lacey Act--Section 242 of the Penal Code (the so-called "Lacey Act") was amended and greatly broadened by the Act of June 15, 1935, (49 Stat. 380) with respect to the interstate shipment of wild animals and birds, to include live animals and birds, as well as the dead bodies or parts thereof, and the eggs of birds; to include transportation by any and all means (formerly limited to transportation by common carrier); and to prohibit transportation from one State to another, including any Territory and the District of Columbia, or any wild animal or bird or the dead body or part thereof, or the eggs of birds, that have been purchased, sold or possessed, as well as killed, taken, or shipped, contrary to the law of any State, etc., Province, or subdivision of a foreign country in which it was killed or taken, or from which shipped. A violation of the section is also predicated on a violation of State law or the law of a Province or subdivision of a foreign country except that portion of Section 242 relating to the making of a false record or rendering of a false account which is dependent of State law.

A new provision was inserted in the amendment to the Lacey Act to prohibit consignees from knowingly purchasing any wild animal or bird, or the dead body or part thereof, or the eggs of any such bird imported from a foreign country, or shipped, transported, carried, brought or conveyed in violation of Section 242. The consignee is also precluded from making any false record or rendering any account that is false in any respect in reference to any wild animal or bird, or the dead body or part thereof, or the egg of any such bird, that has been imported from a foreign country, or shipped, transported, or carried in interstate commerce.

The powers of arrest and seizure and the holding and disposition of seizures are covered under Section 202.

Section 243 is as follows:

"All packages or containers in which wild animals or birds, or the dead bodies or parts thereof, or the eggs of any such birds are shipped, transported, carried, brought, or conveyed, by any means whatever, from one State, Territory, or the District of Columbia

to, into, or through another State, Territory, or the District of Columbia, or to or from a foreign country shall be plainly and clearly marked or labeled on the outside thereof with the names and addresses of the shipper and consignee and with an accurate statement showing by number and kind the contents thereof."

In enforcing Section 243 of the Act it is expected agents will exercise judgment and discretion.

In past years there have been reports of many illegal shipments of beaver and other protected animals and under this section we may be able to locate a number of these unlawful shipments and effectively check such operations. Doubtless there may be cases where the circumstances surrounding the shipments might indicate to you that the omission to mark was due to absolute ignorance of the law without any purpose to evade the statute and where, if the statute had been in the mind of the shipper, there would have been no reason whatever for deliberately omitting the marking. In such instances it is well enough to make note of the omission and make a report thereof to the Survey.

Where it is reasonably clear that the package contains skins that likely were shipped in violation of some State law, and that they are deliberately mismarked, or not marked at all, so as to avoid detection, seizure should be made.

Any skins seized must be placed in cold storage at a temperature about 25 degrees to 30 degrees F. and where free from rats or other vermin, and held for action of the court. No furs once seized should be returned unless authority to do so has been granted by the Survey after study of the facts. The wrapper on a package or container should be preserved as evidence with all the original markings and tags, if any. Affidavits and a complete report in connection with any seizure should be furnished the Survey as promptly as possible as this class of cases, in the very nature of things, must be handled as expeditiously as possible.

Where there is doubt regarding its legality or illegality it would be safer to allow a package containing furs to continue to destination than seize it. Notation can be made of the markings, waybill, etc., so that thereafter the agent can furnish his affidavit based on such facts, if further investigation discloses a violation was committed. In some instances a fur house may cooperate by holding such package for a few days pending completion of investigation and if found to be unlawful the original package could then be obtained.

Seizures of furs under the Lacey Act as amended must be handled on a different basis, mainly because of their commercial value and the provisions of the law. Large shipments are apt to be quite valuable, and it is seldom necessary to impose sole responsibility upon the agent in the field for their disposition. It will be possible in connection with fur seizures simply to detain the shipment, report the full facts to the Bureau, and obtain specific instructions for its disposition.

Where illegal shipments or suspected illegal shipments have reached the hands of consignees and are still on hand and subject to seizure under proper authority the consignee might be told it may be desirable to withhold checks or remittances in payment therefor until all questions of legality of shipment have been cleared up.

Where legal furs are commingled with illegal furs in an interstate shipment and it is not possible to separate one from the other the entire shipment can be held.

Illegal furs entering commerce that have been purchased and paid for by the consignee, if they can be positively so identified, should be seized wherever found, except in the hands of an innocent third party purchaser. Evidence of such shipments should be reported for transmittal to proper authorities. Invoices and cancelled checks issued in payment therefor, together with shipping evidence are essential.

Falsification of records of the receipt of wild animals or birds, or parts thereof that have been carried, shipped, or transported in interstate commerce, or the rendering of false accounts with respect thereto, by consignees, unless the shipment was illegally made, does not justify seizure of the shipment with respect to which the false record or false account has been made or rendered.

Failure to mark or the mis-marking of shipments for interstate transportation are ordinarily strictly Federal violations.

No seizure of illegal skins or animals from consignees can be returned to the States from which made. They must be held for disposition by the Federal Court at the time of conclusion of the case.

35. Duck Stamp Act--The Migratory-Bird Hunting Stamp Act of March 4, 1934 (48 Stat., 451) as amended June 15, 1935 (49 Stat. 379) makes it necessary for all individuals over 16 years of age hunting wild ducks, geese, and brant to have on the person while so hunting a stamp issued by postmasters, the fee for which is \$1.00. The stamp must be validated by the hunter writing his name across its face in ink. Any hunter afield with a stamp not so validated should be asked to write his name on the stamp. If the request is not forthwith complied with or you have good reason to believe he is hunting with a stamp of another person, the stamp should be seized and arrest made if circumstances justify and report sent to the Survey. No person over 16 years should be permitted to hunt without the stamp. Agents should check daily all waterfowl hunters in the field to see that they have the stamp and reports of cases justifying Federal prosecution should be sent to the Survey.

Power of arrest under this Act is set forth in Sec. 6.

36. Migratory-Bird Conservation Act--The Migratory-Bird Conservation Act of February 18, 1929 (45 Stat. 1222) authorizing the establishment of a system of national refuges for migratory birds is administered by another division and special instructions thereon have been issued to the enforcement personnel of that division. Agents should cooperate as far as possible in the protection of migratory birds on these areas. Police power is conferred by Section 13.

37. Protection of Wild Animals and Birds and Bird's Eggs and Government Property on Federal Refuges--Section 145, Criminal Code and Criminal Procedure, Title 18, U. S. Code, which has relation to areas set aside as refuges or breeding grounds for wild animals and birds, and is administered by the Biological Survey, is as follows:

"Section 145. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird or wild animal of any kind whatever, or take or destroy the eggs of any such bird on any lands of the United States which have been set apart or reserved as refuges or breeding grounds for such birds or animals by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture, may, from time to time, prescribe, or who shall willfully injure, molest, or destroy any property of the United States on any such lands shall be fined not more than \$500, or imprisonment not more than six months, or both. (Sec. 84, Act of March 4, 1909, as amended April 15, 1924, 43 Stat. 98)"

Police power to handle trespassers on bird and game refuges and reservations is derived from Sec. 13, of the Migratory Bird Conservation Act (45 Stat. 1222).

Prosecutions for infractions thereof are generally instituted by the filing of an information. Agents should obtain and furnish the Survey with witness affidavits regarding any violations of this section that may come to their attention and cooperate fully with reservation protectors and rangers. (Sec. 10 of the M.B. Conservation Act also relates to trespass on wildlife refuges.)

38. Assault Act--An amendment to the Act of May 18, 1934, (48 Stat. 780) was approved on February 8, 1936, so as to include within its terms any officer or employee of the Department of Agriculture designated by the Secretary of Agriculture to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals.

The Act makes it unlawful to forcibly resist, oppose, impede, intimidate, or interfere with an officer engaged in performing official duties, or assault him on account of such duties, and fixes the penalty at not more than \$5,000, or imprisonment for not more than three years, or both. If a deadly or dangerous weapon is used, the penalty is not more than \$10,000, or more than ten years' imprisonment, or both.

Where an officer is killed in line of duty, the penalty is, as provided in Section 275, of the Criminal Code, upon conviction, for murder in the first degree, death; for murder in the second degree, imprisonment for not less than ten years or life; for voluntary manslaughter, imprisonment for not more than ten years; for involuntary manslaughter, imprisonment for not more than three years, a fine not exceeding \$1,000, or both.

The Statute, as amended, (49 Stat. 1105) reads as follows:

"That whoever shall kill, as defined in Sections 273 or 274, of the Criminal Code, any United States marshal or deputy United States marshal, special agent of the Federal Bureau of Investigation of the Department of Justice, post office inspector, Secret Service operative, any officer or enlisted man of the Coast Guard, any employee of any United States penal or correctional institution, any officer of the Customs Service or of the Internal Revenue Service, any immigrant inspector or any immigration patrol inspector, any officer or employee of the Department of Agriculture designated by the Secretary of Agriculture to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Division of Grazing of the Department of the Interior, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under Section 275, of the Criminal Code."

"Sec. 2. Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person designated in Section 1, hereof while engaged in the performance of his official duties, or shall assault him on account of the performance of his official duties, shall be fined not more than \$5,000, or imprisoned not more than three years, or both; and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both."

No police power is conferred on Department employees under this Act. Proceedings can be instituted, however, by filing a complaint with a U. S. Commissioner, but doubtful cases should be taken up with the U. S. Attorney.

39. Black Bass Law:--The Hawes law (44 Stat. 576) regulating the interstate transportation of black bass caught, sold, purchased, or possessed contrary to the law of the State, Territory, or District of Columbia wherein the delivery of such fish for transportation is made,

is committed to the Bureau of Fisheries in the Department of Commerce for administration. Any violations of the act that come to the notice of Agents should be reported to the Survey.

40. Bait and Parts of Birds:--In the prosecution of any person for shooting doves or waterfowl over or by means of bait it is necessary that we have for presentation as evidence at the trial some of the grain or other foods recovered by Agents that had been scattered or placed on the area over which shooting was done. For this purpose only a small quantity would be required and this could be placed in a glass jar or other receptacle after being appropriately marked on the outside to indicate the field from which taken, the date taken and the names of the persons who were hunting.

In connection with the purchase of meals at which game birds are served we call attention to the necessity of saving a few bones from migratory game birds that may be furnished by hotels or restaurants. Such bones, where there is any doubt as to the particular species of waterfowl involved, should be forwarded to the Survey by registered mail in order that they may be identified here by an expert, after which the bones will be returned to the agent for use as evidence at the time of trial. The United States Attorney will be furnished with an affidavit from the Bureau expert who examined the bones and identified them as being parts of migratory game or other birds afforded protection under the Migratory-Bird Treaty Act.

41. Youthful Violators:--When three Migratory-Bird Treaty Act cases were called for trial in a Federal court, it developed that the offenders were boys of 14 and 15 years of age. When the cases were submitted to the Bureau the report gave the age of each boy as more than 18 years, otherwise they would never have been reported for Federal prosecution. The submission of cases of this character to Federal court generally results in no benefit and often in just criticism, and takes up considerable time of the prosecuting officials.

It is not the practice of the Bureau to report for prosecution cases wherein the offenders are less than 18 years of age unless the offenses committed are of a very serious nature and every other recourse has been exhausted. Many offenses by youths are inconsequential and neither require nor justify bringing the boys into Federal court. Any small fine imposed would not, in my judgment, deter boys from committing violations in the future; and would undoubtedly result in the assumption of an antagonistic attitude toward the enforcement of the game laws and disrespect for Federal conservation officers.

There is no doubt that the air rifle and the sling shot play an important part in the destruction of a number of our migratory birds. The ambition of youth seems to be for a display of marksmanship, and the difficulties of repressing these actions by young America has been ever present. Two remedies present themselves, however, (1) the presentation of the matter to the parent or guardian of the offender or (2) reference to the United States attorney. It has been our experience that the

parents are usually willing to lend a helping hand in an effort to curb the more or less pernicious activities of their children. Where it develops that a parent contemplates placing no restrictions upon his child in connection with the destruction of migratory-bird life, then the agent should discuss the matter with the United States attorney and endeavor to have this official require the boy to appear before him, at which time he could explain the object and purposes of the Federal game law and the necessity for his strict observance of it.

In future when reporting to the Bureau cases against boys, accompany the report with Form Bi-300, on which should be shown the age of the boy and also whether he is attending school or is employed.

42. Cold-Storage Cases:--In connection with the possession of migratory waterfowl in cold storage during the Federal close season, proof should be furnished the Survey that the seized birds had been placed in storage by the person whose name is given on the package or that they were put in storage by another acting under his authority. An affidavit to this effect (giving the date the birds were placed on storage) should be obtained, if possible, from the manager of the storage plant or other person in charge having personal knowledge of the fact. In addition the Agent should interview the accused, if convenient, in an effort to procure a signed release for such birds, or an admission of ownership, which, if verbal, should be included in the Agent's affidavit. If it is not possible personally to interview the accused, the matter of procuring a release should be taken up with him by correspondence.

43. Spite Cases:--Where the sole evidence in connection with an offense consists of an affidavit by an individual, unsupported by affidavit of a U. S. Game Management Agent or Deputy Agent, U. S. Deputy Warden, or State Warden, it will be necessary for the Agent or Deputy to furnish a statement indicating that the violation was actually committed by the accused and that the affidavit was not furnished as a result of spite work or personal enmity. An Agent should endeavor to obtain sufficient evidence to substantiate the facts related in the witness affidavit and should in all cases interview the accused or else write him for his version of the matter and then submit to the Survey any communication or affidavit received as a part of the evidence in the case.

44. Reporting Violations:--There should be as little delay as possible in forwarding cases for prosecution, as stale cases are not looked upon with favor by courts and prosecuting attorneys.

45. Handling Cases Direct:--The Survey has no objection to Agents furnishing United States attorneys with witness affidavits covering offenses wherein an accused has expressed a willingness to enter a plea of guilty and when court is in session or about to convene, provided such procedure has the approval of the prosecuting attorney. In all cases of this character, however, on the filing of the evidence with the United States attorney the Survey must be immediately advised and furnished with a copy of the witness affidavits so that the Survey in turn may submit it

to the Solicitor of the Department, who will promptly take the matter up with the Department of Justice.

46. Interest in Cases:--An Agent's interest in a particular case should not lapse after submission of evidence to the Survey and the case has been forwarded for prosecution. Cases have been known to lie dormant for long periods. When an Agent is at a point where Federal court meets and in a district where cases obtained by him are known to be pending, he should call at the clerk's office and ascertain their status, and take up with the United States attorney or his assistant the matter of pending cases to ascertain whether arrangements can be made for their early disposition.

In this connection an Agent should remember that the prosecuting attorney is busily engaged with various kinds of prosecutions and therefore should be tactful in his dealing with his official. He should not offer any criticism of the manner in which cases are handled but answer all questions and in a general way give any information the attorney may desire. Agents are not authorized to agree to the dismissal of cases but the United States attorney should make his recommendations in such matters through the Department of Justice.

47. Concealed Weapons:--Firearms are furnished to Game Agents as a means of self-protection to be carried when on active duty and they must not be used unless there is impending danger. It is not permissible for an Agent to use a pistol or gun as a means of compelling an offender to obey his command to halt.

A commission as U. S. Deputy Game Warden does not, in itself, give the right to carry a revolver or pistol at all times. There is no Federal statute specifically authorizing Federal officers to carry firearms, but, in some instances, where such officers have been arrested by State officials when in the discharge of their official duties the courts have held that the right conferred by law to make arrests impliedly gives Federal officers all rights and powers necessary to enforce the authority conferred upon them, and that when they are engaged in the enforcement of a Federal statute they are not bound by a State law prohibiting them from carrying concealed weapons.

The Bureau does not permit its deputy game wardens to carry concealed weapons, except for personal defense when in the discharge of their official duties. If, at any time, a deputy game warden should be placed on per diem duty by the Bureau to enforce the provisions of the Migratory-Bird Treaty Act, we are of the opinion that he would then have the right to carry a concealed weapon while on such active duty, to be used, when necessary, in the defense of his person, and that a State law prohibiting the carrying of such concealed weapon would not then apply. On all other occasions, however, he must comply with the provisions of the laws of the State in which he may be when he desires to carry a revolver or other firearm.

48. Attendance at Meetings and Delivery of Lectures:-- A Game Agent may attend meetings in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to his work and the Federal game laws. Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Survey permission to do so.

49. Fees:--(See Sec. 1522, Regulations of Department). Directors or Agents who testify in any judicial proceeding in Federal or State courts in any case involving violations of the Federal game laws, or in cases originating in the Department, shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations.

When an employee appears in cases between private parties or by some party other than the Federal Government where the employee is called upon solely because of and to testify in his official capacity or to produce official records or information, fees and expenses should be accepted but all amounts so collected over and above the amount of actual and necessary expenses, a statement of which must be furnished the Chief of the Bureau, must be turned into the Treasury as Miscellaneous Receipts.

When an employee appears as a witness on behalf of the United States in any case not originating in this Department, his account for travel and subsistence prepared on a special form furnished by the U. S. Marshal, should be presented to the marshal or other officer of the court authorized to pay the expenses of witnesses.

When an employee appears in any judicial proceeding on behalf of any party other than the United States, he should arrange in advance with the party in whose interest he appears for his travel and subsistence expenses.

United States Game Agents must not accept any fees, parts of fines, rewards, or remuneration of any kind as payment or reward for obtaining or assisting in obtaining cases involving violations of State or Federal game or fish laws.

50. Reports:--Agents must also forward to the Survey and to the Regional Director at the end of each week, on blanks furnished for that purpose, a summary report containing detailed statements of their activities during each week and the results accomplished. These reports must be in sufficient detail to give information as to the actual work performed and results accomplished each day, together with time of arrival at and departure from points between which travel is performed.

Deputy Game Wardens must render weekly reports on blanks supplied, during the time they are actually employed.

51. Itinerary:--The Survey should be kept informed of a Director's or Agent's itinerary while absent from headquarters so he can be

easily reached in an emergency, unless detailed instructions in that regard have been given to some one at his office or home address.

52. Care of Property:--Care should be exercised in preventing the loss or theft of badges, pistols, binoculars, or other equipment, as lack of ordinary care will probably make it necessary to require an employee to pay for such lost property. An unscrupulous person with a badge could reap personal gain by impersonating a Federal officer.

53. Writing Accusatory Letters:--In the investigation of violations of the Federal game laws, Agents and deputies must not write letters accusing persons of having violated, or warning them not to violate the law. Several accusatory letters couched in sarcastic language have been written by some of our employees to persons warning them that they would get into trouble with the Government if they persisted in violating the law. The Bureau can not countenance this practice.

When there is reason to believe that any person has committed a violation it is the duty of Agent or deputy promptly and vigorously to investigate the matter. The investigation should be conducted in a quiet, orderly manner and, if possible, without the knowledge of the supposed violator. When the investigation discloses that a violation has been committed and it is desirable to obtain, if possible, a signed statement from the accused person in order to strengthen the case against him, or a reasonable doubt exists in regard to the guilt of such person, it is proper for an Agent or deputy to interview or write to the suspected person for the purpose of obtaining any statement he may care to make concerning the transaction. The entire investigation should be conducted, however, in a dignified manner and in a way least calculated to give offense to any person.

54. Correspondence and Telegrams:--Original letters from United States Attorneys and their assistants in regard to game law cases, together with copy of the Agent's reply, if any, should be furnished the Survey.

All letters to the Survey should be directed to the "Chief, Biological Survey, Washington, D. C." Communications should be sent to no other Department or Bureau of the Government at Washington.

All telegrams to the Survey should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but Agents should not hesitate to use them in emergency cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense in respect to annual or sick leave, or leave without pay.

When writing to the Survey letters containing information that must be submitted to another Agent for further investigation Agents should furnish an original and one carbon copy.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case or subject involved.

Attention is called to Section 1631, of the Regulations of the Department of Agriculture.

No individual's name shall appear on any letterhead used in the Department.

55. Transportation Requests:--Transportation requests should be used in paying for railroad transportation (and for air travel where justified), except when it may be necessary to pay cash fare in order to conceal the identity of an Agent.

56. Leave of Absence:--Sections 2511 to 2562, inclusive, of the Department Regulations must be strictly followed. Deputy Wardens and temporary employees are not entitled to leave of absence.

57. Personal Conduct:--Employees shall at all times conduct themselves in a manner so as to not cause embarrassment to or criticism of the Department or interfere with the efficient performance of their duties. For example, employees of the Department whose duties require the enforcement of laws or regulations or who are in a position to toward or influence the award of business or to grant or influence the granting of favors, should not accept from any person, firm, or corporation with which he has official relations any favor, gift, loan, unusual discount, gratuitous service, or other thing of value; nor should any employee of the Department give or use information acquired by means of his official position to advance the interests of himself, his family, his business associates, or his personal friends over those of other persons.

58. Political Activity:--(See paragraph 1542, Regulations of the Department).

59. Temporary Assistant:--A temporary assistant hired under letter of authority does not possess powers conferred by Section 5, of the Migratory Bird Treaty Act, Section 202 of the Macey Act, Section 6 of the Waterfowl Stamp Act, or Section 13 of the Migratory-Bird Conservation Act to make arrests, or otherwise exercise police powers in the enforcement of any of these acts. Only those persons specially authorized by the Secretary of Agriculture may exercise such police powers, but a temporary assistant may render aid to a regular employee in making an arrest. Such temporary assistant would be a competent witness.

60. Efficiency--An Agent is rated upon efficiency, and in fixing ratings the following matters will be considered:

- (1) The status of game law observance in his district.
- (2) General activity in the district covered.
 - (a) The sufficiency of evidence gathered upon which to base prosecutions.
 - (b) Knowledge of the law and of conditions.
 - (c) Cooperation with State and Federal officials.
 - (d) Expenses incurred.
 - (e) Completeness of reports.
- (3) Compliance with regulations of the Department and rules of the Survey.
- (4) Willingness to work.
- (5) Initiative.
- (6) Dispatch.
- (7) Accuracy.
- (8) Neatness.
- (9) Cheerfulness with which duties are performed.
- (10) Personal conduct.

No attempt has been made to list these subjects in the order of their importance; suffice it to say that an Agent's entire course of conduct and activity will be scrutinized and considered in determining his efficiency.

APPENDIX

Title 18. -- U. S. Criminal Code and Criminal Procedure.

Sec. 244. Allowing prisoner to escape. "Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than \$2,000.00, or imprisoned not more than two years, or both. ***" (R.S. Secs. 5409, 5410; Feb. 6, 1905, c. 454, Sec. 2, 33 Stat. 698; Mar. 4, 1909, c. 321, secs. 138, 139, 35 Stat. 1113.)

Sec. 246. Rescuing prisoner; concealing person from arrest. "Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discover and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than \$1,000.00, or imprisoned not more than six months, or both." (R.S. secs. 5401, 5516; Mar. 4, 1909, c. 321, sec. 141, 35 Stat. 1114.)

Sec. 247. Rescue of Prisoner. "*** Whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than \$500.00 and imprisoned not more than one year." (R.S. sec. 5401; Mar. 4, 1909, c. 321, sec. 143, 35 Stat. 1114.)

Sec. 753h. Prisoners escaping or attempting to escape punishment. "Any person * * * * who is in custody by virtue of any process issued under the laws of the United States by any Court, judge, or commissioner, or who is in custody of an officer of the United States pursuant to lawful arrest, who escapes or attempts to escape from such custody * * * * shall be guilty of an offense. * * * and if the custody * * is by virtue of an arrest on charge of or for a misdemeanor, and prior to conviction, the offense of escaping or attempting to escape therefrom shall constitute a misdemeanor and any person convicted thereof shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both * * * *" (As amended August 3, 1935, c. 432, 49 Stat. 513.)

I N D E X

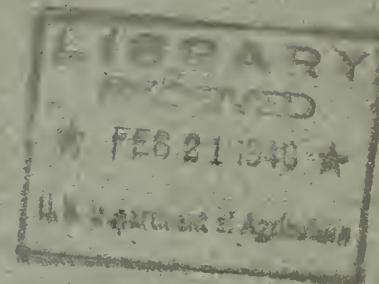
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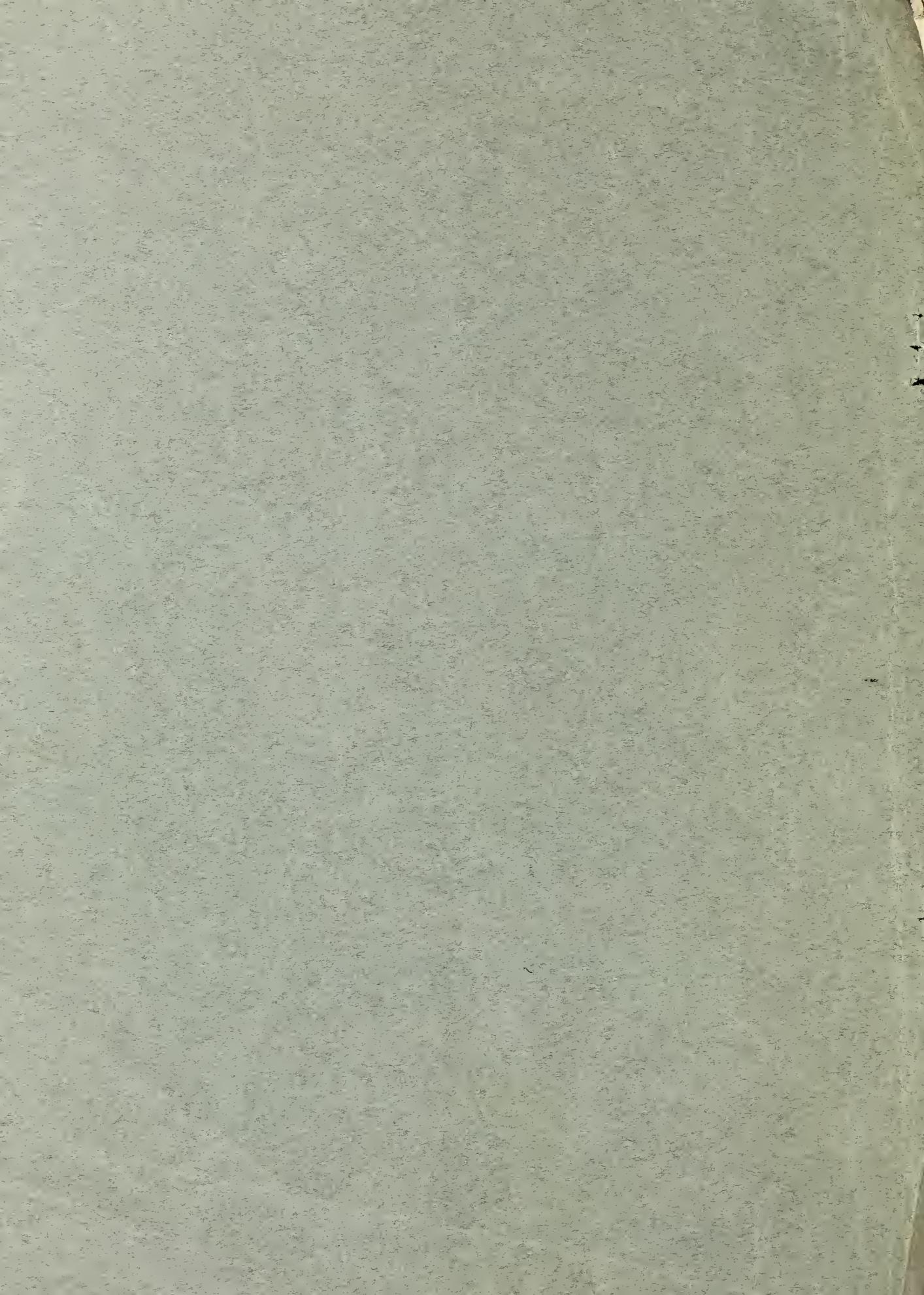
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UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Biological Survey



INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES
GAME MANAGEMENT AGENTS AND UNITED STATES
DEPUTY GAME WARDENS

Washington, D. C.
October 1939
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INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES GAME MANAGEMENT AGENTS
AND UNITED STATES DEPUTY GAME WARDENS */

1. This manual is intended as a guide for those whose work is connected with the enforcement of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; U. S. Code, Title 16, Conservation, Secs. 703-711) as amended June 20, 1936, (49 Stat. 1555), the provisions of the United States penal code commonly referred to as the Lacey Act (Criminal Code and Criminal Procedure, Title 18, U. S. Code), as amended June 15, 1935 (49 Stat. 380) and June 19, 1939, the Migratory Bird Hunting Stamp Act of March 16, 1934, (48 Stat. 451) as amended June 15, 1935 (49 Stat. 379) and is especially for the use of United States Game Management Agents, Deputy U. S. Game Management Agents, and United States Deputy Game Wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Regulations of the Department.

2. Proficiency of Agents:-Game Agents can not become proficient without being thoroughly familiar with the Regulations of the Department, the practice and procedure in handling violations, and the provisions of the Migratory Bird Treaty Act and Regulations under the Act, the Lacey Act, and Migratory Bird Hunting Stamp Act. In connection with the illegal interstate shipment of birds and animals it is also important that Agents become familiar with the provisions of the laws governing the export of birds and animals or parts thereof in the States within their respective districts. It is obviously impracticable to include in a manual of this character all legal provisions relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought the instructions contained herein will be helpful to all Agents and Deputies in the discharge of their duties.

To be a good officer an Agent must be not only courteous but courageous, although he should avoid any form of harshness or an overbearing attitude. His methods should be direct, orderly, and firm, without provoking resistance. When approaching a person suspected of violating the law the officer should make known his identity and give his name to the hunter before checking over his bag, license or stamp and also give to such individual information he may desire regarding the Federal regulations.

While an Agent may exercise reasonable force, when necessary in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There will be times when an Agent must act swiftly and forcibly, and if criticized for his act, his reputation for tact and courtesy will sustain him.

* The functions of the Secretary of Agriculture with respect to wildlife having been transferred to the Secretary of the Interior under the Reorganization Act of 1939, every reference herein to "the Secretary of Agriculture" or "the Secretary" should read "the Secretary of the Interior."

The efficiency of an Agent and his usefulness to the Survey will depend in large measure upon his ability to command the respect and confidence of those with whom he comes in contact. Courtesy on the part of an Agent in his official capacity will not be tolerated.

Whenever an Agent is in doubt as to the law or methods or procedure he should write at once (or wire if the matter is urgent) to the Survey for information, stating the case fully and plainly. Cooperation and advice may also be had from United States attorneys or their assistants, and in emergencies, United States customs officials also may often be able to render valuable aid.

3. Identification of Birds and Fur-Bearing Animals--Agents should make an effort to become familiar with all kinds of migratory birds protected by the Federal statute that occur in their districts so that they can readily identify any birds found in possession of a hunter or other individual. Knowledge in this connection may be obtained through observation in the field, at bird aviaries and zoos, likewise at museums and from bird handbooks.

Those agents who inspect fur shipments should also become familiar with the different types of fur-bearing animals and skins of such animals.

4. Powers of Agents under Lacey Act--Game Agents have power to arrest offenders of Sections 242-243 or to make seizures of live wild animals or the skins or parts of the dead bodies or wild mammals and birds in cases involving violations of the Lacey Act, and may in proper cases apply for search warrants or warrants of arrest thereunder. However, the Federal court or United States attorney usually directs the issuance of warrants to bring in offenders for trial after an information has been filed or an indictment had for violations. The evidence necessary to complete a Lacey Act case, when shipment is made by common carrier, comprises the express record of receipt and delivery of shipment, affidavit of express agent as to shipment or delivery, affidavit of consignee showing his receipt of shipment and other pertinent facts, and also canceled check issued in payment of shipment, together with original correspondence had with consignor, if available or the illegally shipped furs or game.

If the investigation concerns the receiving "knowingly" of an illegal shipment by a consignee, the affidavit of the consignor or shipper, or of an Agent who examined the shipment in transit to establish its contents, together with the affidavit and delivery record of the common carrier would be necessary.

In a mismarking or failure properly to mark a shipment under the Lacey Act, in addition to the above evidence, the original wrapper or container of the shipment constitutes the best evidence, but the markings of a box or barrel may be carefully described in an affidavit by a witness. Any of or all these papers or evidence obtainable by an Agent noting an apparent violation of the Lacey Act, with the Agent's report, should be transmitted to the Survey for appropriate action. When illegal interstate transportation is by automobile or other private carrier, the facts may be established by affidavits of witnesses and such records as may be available from the consignee. In case of seizures the case will be more easily established.

5. Powers of Agents under Treaty Act:--The powers of Game Agents and those appointed to enforce the provisions of the Migratory Bird Treaty Act are conferred by Section 5 of the Act.

United States Deputy Game Wardens possess the same police powers under this statute as Game Agents and Deputy Agents, but they are not permitted to perform travel or to incur expenses chargeable to the Survey without prior specific authorization; and when so authorized they will be paid at a per diem rate for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

All migratory birds, the plumage or parts thereof, nests, or eggs, taken, transported, or possessed contrary to the provisions of the Migratory Bird Treaty Act may, in proper cases, be seized and held for use as evidence and for disposition by the court. Likewise all nonmigratory birds, or parts, nests, or eggs thereof, shipped or transported in interstate commerce that have been sold, purchased, carried, or transported from one State to another contrary to State law, may be seized under Section 5 of the Migratory Bird Treaty Act or Section 242 of the Lacey Act. Positive information as to the alleged illegal transportation of migratory or non-migratory birds should be in possession of an Agent, however, before a seizure is actually effected.

Plumes of birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and Agents have no power to seize such plumage, unless it is transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act and Section 242 of the Lacey Act. (Such foreign plumage, however in possession for commercial purposes is subject to seizure by Customs authorities.)

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Agents are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond reasonable doubt that the accused is in unlawful possession of the things seized or that such articles have been or are being illegally transported. Illegal seizure not only will provoke serious criticism of the Survey but it may lead to an action to recover damages against the Agents making it or to other action.

When a person commits a violation in view of an Agent, or the Agent has a warrant for the arrest of a person, he may, after he has made an arrest, search his prisoner and take from his person, and hold for disposition by the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the offender to commit an act of violence or effect his escape.

Agents have no right to search an accused not under arrest or to take from a person not under arrest any articles for use as evidence without his consent, except illegally shipped or illegally possessed wild birds or illegally shipped wild animals or parts thereof. After an arrest has been made an Agent may seize, in addition to contraband birds, furs or parts of wild animals being illegally transported by private conveyance in interstate commerce, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt.

Agents have no authority to demand that a hunter surrender the gun for inspection to ascertain if capable of holding over 3 shells but may inspect it if the hunter consents. Where a hunter violates the regulation in view of an Agent the gun may be seized as evidence only if the offender is arrested, but if the hunter gives a signed admission, agrees to meet the Agent in court when notified, and signs a receipt for the gun, it may be returned to him and no arrest made. Finding a hunter on a migratory bird area with an automatic or repeating gun is no ground for seizure and arrest unless the Agent has strong reason to suspect the hunter used the gun to kill migratory birds he then possesses. Effort should always be made to obtain a voluntary signed statement.

Compromise of Cases:--Game Agents must not settle or compromise any cases or offer immunity to any person accused of violating the law, and must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States (see Section 10 following), and accused persons can be fined, or imprisoned, for an offense only after conviction by Federal court or Federal judge, or in default of bond by a commissioner or other officer.

7. Duties:--Agents are appointed for the specific purpose of enforcing the provisions of the Migratory Bird Treaty Act and Regulations; Sections 241-244 of the United States Penal Code (Secs. 391-394, Title 18, U. S. Code), as amended, commonly referred to as the Lacey Act; and the Migratory Bird Hunting Stamp Act. The authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Survey.

8. Appointment of U. S. Deputy Game Wardens:--Under present policy no one will be recommended for appointment as a U. S. Deputy Game Warden unless he is a member of a law enforcement agency and has the endorsement of his superior and that of the Regional Director of the Biological Survey. When he ceases to be a member of a State or local law enforcement agency, his appointment with the Bureau will be terminated. In those few States where State legislation forbids law enforcement officers serving in dual capacity (State-Federal men), appointments can be issued to other than law enforcement officers on the recommendation of the Regional Director. Furthermore, upon recommendation of the Agent and the Regional Director, appointments may be made in any State to meet the needs of the service. No paid member of any cooperating law enforcement agency having a U. S. Deputy Game Warden's appointment shall be paid any compensation from Federal funds.

A U. S. deputy commission cannot be held by anyone who takes part in political management or in political campaigns.

Our records indicate that the following States prohibit their law enforcement officers from holding commissions as U. S. Deputy Game Wardens:

1. Colorado, Chief Deputy Wardens; regular deputy wardens may be appointed.
2. Florida.
3. Idaho, Chief Deputy Wardens; regular deputy wardens may be appointed.
4. Illinois.
5. Indiana, may be appointed but can receive no compensation.
6. Mississippi.
7. New Jersey, but their non-salaried deputies may be appointed.
8. North Carolina.
9. Pennsylvania.
10. Rhode Island.
11. South Carolina.
12. Texas.
13. Virginia.
14. Wisconsin.
15. Wyoming.

9. General Activities of Enforcement Officers:--All Agents, Deputy Agents, and Deputy Game Wardens while assigned to active duty shall devote their entire time to the Federal service, but under certain limitations they may be engaged on other work provided it does not impair their efficiency, and so long as the work to be performed in a private capacity can not be construed by the public to be official acts of the Department.

Except as directed in his letter of authorization, no Agent shall perform travel at government expense, unless specially authorized by the Survey.

An Agent will be assigned to a definite district and will confine his operations to that district unless specifically assigned to duties outside his district, but he may travel in territory contiguous to his district when violations are being committed or if the pursuit of a violator requires him to enter such contiguous territory.

When an Agent operates in a district assigned to another, either on special instructions or as a necessary incident to the conduct of his work, a copy of any letter or report to the Survey on investigations made or affecting persons apprehended violating the law should be furnished the Survey for the information of the Agent in whose district he has been operating.

It is the duty of an Agent to familiarize himself with migratory bird and hunting conditions in his district, especially in those sections where the law is most frequently violated. Important hunting sections should be patrolled as frequently as the Agent's allotment for travel expenses will permit and when good reasons exist for his believing that conditions require his presence.

An Agent must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding persons, and open channels for information concerning those things of which he ought to get early knowledge.

10. Procedure--Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witness for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonable to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations, which will be proceeded against as hereinafter mentioned.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings, it is preferable for an Agent to take an arrested offender before the nearest United States commissioner for hearing, or to apply to the United States commissioner for search warrants, warrants of arrest, or other process needed in the enforcement of the Federal game laws.

Officials named in said Section 1014 customarily follow the practice in State courts. Agents, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by any of the State or municipal officials referred to in Sec. 1014 R. S. for Federal violations they must be guided by the provisions of State laws relating to the serving of such writs.

11. Corporations--Corporations can not be prosecuted in the same manner as are individuals. In a case against a corporation, an Agent will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Survey with a report of the case. In cases involving firms, co-partnerships, or corporations, special care should be taken to ascertain the full names and addresses of all the partners of a firm or co-partnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

12. Confessions-- A confession not made in open court can not be relied upon to obtain a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration of a person that he has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. As defendants frequently deny their confessions when confronted by them in court, it is important that Agents procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the person making the confession can be taken immediately before the court and there pleads guilty. In such cases, the Agent should consult the United States attorney who, no doubt, will be willing to expedite the prosecution. It is proper for an Agent to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the Agent should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

13. Prosecution After Conviction in State Court--It is a fundamental principle that where the same act constitutes a distinct offense against each of several sovereignties, a prosecution by one does not bar per se a prosecution by the other. An act, therefore, which is an offense against a State and against the United States may be punished by both, and a plea of former jeopardy in a State court will not be a bar to a prosecution in the Federal court. There is nothing in the Migratory Bird Treaty Act which makes the jurisdiction of the United States in the premises exclusive, and the jurisdiction of the United States courts is not exclusive unless there are found elsewhere in the legislation of Congress provisions of clear and unmistakable import taking away the jurisdiction of the courts of the State.

People vs. Welch, 141 New York, 266.
U. S. vs. Cruikshank, 92 U. S. 542.
U. S. vs. Barnhart, 22 Fed., 285.

In writing the opinion in the case against Cruikshank, Chief Justice White said:

"The people of the United States resident within any State are subject to two governments; one State and the other National; but there need not be any conflict between the two. The power which the one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act***. This does not, however, necessarily imply that the two governments possess powers in common or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereigns and claims protection from both. The citizen can not complain because he

has voluntarily submitted himself to such form of government. He owes allegiance to the two departments, so to speak, and, within their respective spheres, must pay the penalties which each exacts for disobedience to its laws. In return he can demand protection from each within its own jurisdiction."

While there can be no doubt about the right to prosecute in Federal court a person who has been convicted in a State tribunal for commission of the same act, the courts are loath to impose a second punishment where adequate punishment has already been meted out to the offender.

It has been, and no doubt will continue to be, the policy of the Bureau to refrain from reporting for prosecution in the Federal court violations of the Migratory Bird Treaty Act where the accused has already been convicted and adequately fined in State court for the commission of the same act. Only in exceptional cases where the enormity of the offense or the inadequacy of the punishment inflicted in a State tribunal justifies, will the Bureau recommend that an accused person be further prosecuted in the Federal court.

In forwarding to the Bureau cases in which the accused has already been prosecuted in a State court, not only should good and sufficient reasons be furnished to warrant a further prosecution in a Federal court in case such a prosecution is recommended, but also a full statement as to the action already taken in State court against the accused.

14. Cooperation with State Authorities:--Cooperation on the part of the public, and particularly on the part of State and municipal officials, is highly desirable and will serve to assist in bringing about proper and effective enforcement of the Federal game laws. These officials in the various branches of State and municipal governments are all in position to render invaluable assistance. A Game Agent should earn the confidence and respect of all such officers and of the public in furtherance of such cooperation.

Evidence of violations committed contrary to both Federal and State laws should ordinarily first be transmitted to the Survey for consideration, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for action.

All reports relating to the illegal interstate shipment of live animals or the dead bodies of game animals, or parts thereof, or skins of fur animals, should first be submitted to the Survey. This material will be examined, classified, carded, and such as is desirable to turn over to the States will then be forwarded from the Washington office either direct or through an Agent or Regional Director to the States interested.

Agents should make every effort consistent with the discharge of their duties in the enforcement of the Federal law to obtain evidence of State violations, and in addition to transmitting the evidence to the proper State authority in proper instances as herein outlined, should report to the Survey all such cases, including final disposition in State court. These reports are essential to enable the Survey to keep a complete record of total cooperation extended the several States in the enforcement of their game laws.

15. Affidavits:--Affidavits respecting game law violations must be carefully prepared and should contain a clear and concise statement of the facts constituting the offense within the personal knowledge of the affiant. They must show the place where (town, city, or post office, and county and State), and the exact date when (month, day, and year) the violation occurred, and the name and address of the violator. An affidavit indicating that an offense occurred "on or about" a certain date is not sufficient. Hearsay evidence, irrelevant matter, and facts that may be used by way of defense should be omitted from the affidavit but for the information of the Survey, they should be stated in a report or letter, in duplicate, accompanying the affidavit.

Under a general ruling of the Federal Court of Appeals for the Eighth Circuit, affidavits for use in Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming must describe with particularity and certainty the exact place where an offense was committed.

A separate affidavit should be furnished for each individual violator, even when two or more persons are apprehended at the same time. Ordinarily, but not in all instances, duplicates of the originals properly sworn to will be acceptable where two or more persons are involved.

When practicable, witness affidavits should be sworn to before a United States Game Management Agent or Deputy U. S. Game Management Agent who has been authorized by the Secretary, under the provisions of the Act of Congress of January 31, 1925 (43 Stat. 803), to administer oaths (the Department seal will be affixed to such affidavits when received in the Survey); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall be paid no fee for administering the oath, as they are paid their fees on accounts rendered to the Department of Justice. With regard to all affidavits sworn to before any officer other than our employees, care should be exercised to see that the seal of the attesting officer is properly affixed to the affidavit.

If such an officer is not available, and it is necessary that an affidavit be sworn to before a notary public or justice of the peace having a seal, care should be exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will then be necessary to have affixed to the affidavit the county clerk's certificate of authentication. An Agent may claim reimbursement in his account for fees thus paid to a notary, a justice of the peace, or a county clerk. When expense is involved in obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment. When the Agent or Deputy has been authorized to administer oaths the affidavit should be sworn to before him.

It is the better practice to have witness affidavits executed before one or the other of the officials referred to in next to the preceding paragraph. However, it is not necessary that all of the affidavits relating to a particular case be sworn to before them, but in each case there should

be at least one witness affidavit relating to the facts executed before such officer. It has been held that an arrest under a Federal warrant, based on affidavits verified before a notary public is in violation of the Fourth Amendment to the Constitution. Although the decision referred to involved a somewhat different form of information than used in MBTA cases, it appears that an information based upon affidavits made before a notary public may also be open to the same objection.

(1) A witness affidavit is no place for reference to an offender's personal character or standing. A person of unblemished character and repute may be as guilty of a violation of the game laws as the vilest wretch. Ordinarily, in game cases, character or reputation can throw little light upon guilt or innocence on a specific charge of violation, and if of any significance can weigh only with the court in imposing sentence, not with the Bureau in connection with the prosecution.

An affidavit to be used in a prosecution under our game laws is customarily confined to a direct statement of facts as to the nature of the offense, name and address of the violator, the time and place where it occurred, and circumstances connected therewith, with such statements of conversations with the accused in relation to the offense charged as may have transpired.

Often, however, it is helpful to the Bureau to know anything definite about the character and reputation of a person accused of a violation of the law. But such information ought to be furnished the Bureau in the Agent's report of the case, not in the affidavits.

As to previous conviction of the offender for violation of game laws, if the affiant can, with precision, state the nature of the charge in the previous conviction and the time and place of conviction, such may appropriately be included in an affidavit; otherwise the information should be furnished the Survey in letter form when submitting evidence as to a particular offense.

As to stating time of offense in witness affidavits, it is important for you to bear in mind always that where possible the exact time, whether it be the day or time of the day, should be stated with exactness. But occasionally it will be impossible for the affiant to state the exact day or time of the day.

(2) Whether in expressing the time when an offense under Federal law was committed it is permissible to allege the time as "on or about" a certain date or a certain hour, wholly depends upon the nature of the offense. If the offense is one in which time plays no part, or as usually said "in which time is not of the essence of the offense," it is permissible, though bad practice, in the Federal courts to allege the date of the offense, if not exactly known, as "on or about" a date stated. Thus, as counterfeiting is an offense no matter when the counterfeiting takes place commission of the offense may be alleged as "on or about" a specified date, in a specified month of a specified year.

In those cases, like the counterfeiting illustration (the sale of migratory birds or the killing of wood ducks, for examples) where time is not of the essence of the offense, sale and killing being prohibited at all times, it would be permissible to allege that the sale was made or the killing done "on or about" a specified date, but the affiant, in an affidavit covering these offenses should, to be more definite, allege the time as, for example, "on or about the first day of January, 1937, the exact day being to this affiant unknown, but a day subsequent to the 20th day of December, 1936, and prior to the 10th day of January, 1937. "Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time of the offense may be stated somewhat like this -- "that on or about the first day of January, 1937, I can not say exactly what day, but it was between December 20, 1936, and January 10, 1937, John Doe of _____ sold to me (or to Richard Roe, as the case may be) two wild pintail ducks, (or killed two wood ducks)" etc., or words to the same effect, no matter how framed to fit into the usual informal affidavits.

But in those migratory bird cases involving hunting in closed season, time is of the essence of the offense, for it is no offense to hunt in the open season by means not prohibited. Therefore, the date alleged in an affidavit should clearly appear as a date within the closed season and it would not be sufficient merely to allege "on or about" a specified date, for the "about" might run the time into the open season and therefore leave it uncertain whether the hunting occurred in the open or closed season.

In such cases, if the affiant is unable to fix the definite date of the offense, and, for illustration, the open season is September 15, to November 30, the date of the offense may be alleged in the affidavit as "on or about the first day of September, 1936, the exact day being to this affiant unknown, but a day subsequent to August 20 and prior to September 15, 1936, and within the closed season established by Federal Regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be expressed something like this -- "that on or about the first day of September, 1936, I can not say exactly what day, but it was between August 20 and September 15, 1936, I found John Doe of _____ hunting and killing mourning doves" etc., or words to the same effect no matter how framed to fit into the usual informal affidavits.

Cases involving possession of migratory game birds furnish a good illustration of the inadmissibility of the use of such a term as "on or about" December 12, 1936. Possession of migratory game birds is permitted by the Federal regulations for ten days succeeding the close of the open season, under certain conditions, and therefore time is of the essence of the offense. Assuming the open season to end November 30, possession would be permissible until December 10. If an affidavit should allege possession "on or about December 12, 1936," it could not be determined from the face of the affidavit whether the actual date of the possession was December 10, which would be legal, or December 12, which would be illegal, and so such an affidavit would be too indefinite for the purpose of prosecution.

So, in such a case, the time of the offense should be alleged as "on or about the twelfth day of December, 1936, the exact day being to this affiant unknown, but a day subsequent to December 10, and prior to December 15, 1936, and within the time prohibited by Federal regulation." Or, if the affiant prefers not to use such formal language or such language does not fit into the informal affidavits usually made, the time may be stated something like this --"that on or about the twelfth day of December, 1936, I can not say exactly what day, but it was after December 10, and before December 15, 1936, John Doe had in his possession ten mourning doves," etc., or words to the same effect, no matter how framed to fit into the usual informal affidavit.

(3) What has been said with reference to affidavits as to hunting in closed season applies with greater force to affidavits as to hunting before 7 a.m. or after sunset. As the time of day in such cases is of the very essence of the offense, it is necessary to allege the time with considerable precision. Assuming that sunset on say September 11, 1936, is at five o'clock, it would not be sufficient to allege in an affidavit that the offense occurred "at or about 5:40 p.m. on the first day of September, 1936."

In submitting such cases the time may be stated as "after five o'clock and before 5:30 o'clock, postmeridian, of said day to wit, 5:15 o'clock, postmeridian, John Doe was hunting mourning doves," etc., or if the affiant prefers not to use such formal language, or such language does not fit into the informal affidavits usually made, the time of the offense may be alleged somewhat like this --"that after sunset on the first day of September, 1936, I can not state the exact time, but it was after 5:30 and before 6:00 o'clock p.m., that day, I saw John Doe of 126 Main Street, Macon, Georgia, hunting and killing mourning doves," etc.

In the foregoing illustrations, the important point to bear in mind is that if the affiant can not fix the exact date or hour, he should fix it with reference to two other dates or hours so as to show that the time, although not exactly established, is within a time not permitted by regulations.

The dates and hours employed in the foregoing illustrations are simply examples intended to serve as suggestions to the Agent as to how to express the time of the offense, leaving him to fix the inclusive dates as circumstances require or warrant.

Merely as information for the Agents, it may be stated that grand juries in indictments and U. S. Attorneys in informations, properly may allege a specific date of violation, even though that date be not accurate, so long as it is a date that shows the offense to have been committed before the statute of limitations would bar a prosecution. All the Government needs to do in a prosecution on such an indictment or information is to prove that the offense occurred prior to the expiration of the period of limitation for such prosecution.

In the preparation of all cases an Agent should obtain not only all the facts that are to be relied upon to prosecute successfully the accused, but also any facts that may be used by the accused by way of defense or in

mitigation or punishment. Facts or matter that may be used in defense of the accused or in mitigation of punishment should not, however, be included in any affidavit that is a part of the Government's case against the accused, but should be furnished to the Bureau in a separate report, which should accompany the report of violation.

Agents should always make out the strongest case possible against the accused and submit the evidence in the form of affidavits signed by the witnesses to each violation: or, if it is impossible to obtain the affidavits of witnesses whose names or addresses are obtainable, the Bureau should be furnished with a full report showing the facts which it is claimed are within the knowledge of each of the witnesses and which facts they will testify to if subpoenaed as witnesses.

The facts contained in an affidavit should be stated in the first person singular, and conclusions or opinions of the witnesses should be omitted. Specimen affidavits follow:

S P E C I M E N A F F I D A V I T.

UNITED STATES OF AMERICA,)
State of)
County of) ss
City of)

On this _____ day of _____, 1936, personally appeared before me the undersigned John Jones, who, by me being first duly sworn, deposes and says: I reside at 122 Bleeker Street, in the City of Richmond, State of Virginia, and am a (Deputy) United States Game Management Agent employed by the United States Department of the Interior, Washington, D. C.

Deponent further says that while patrolling the marsh known as Dyke Marsh, in Fairfax County, Virginia, on February 15, 1936, with Fred Jones, I saw two men in a skiff about fifty yards from me, one paddling and the other sitting forward with a gun across his knees. I stopped and watched them, and while looking at them I saw the man with the gun raise the gun and fire two shots into a small bunch of wild ducks that flew over them, and saw three wild ducks fall into the water. The men paddled a short distance and picked the wild ducks out of the water. I then walked on ahead to where I judged they would land, and waited for them. They were in plain sight all the while. When they came ashore I recognized the man who did the shooting as John Doe, of Alexandria, Va. The man who paddled the skiff was Richard Roe, also of Alexandria. I said to John Doe "John, didn't you know this was the close season on wild ducks?" He said, "Yes, but I didn't stop to think about it." I said, "I won't arrest you now, but I'll have to take your birds and report a violation against you." He said, "All right--here they are; you know where to find me." I know both of the men personally, and for this reason did not arrest them; they are both residents of Alexandria, Va., and are employed at the shipyard. I placed the three wild ducks in cold storage with the Economy Ice Company at Alexandria, Va.

JOHN JONES.

Subscribed and sworn to before me this _____ day of _____, 1936.

UNITED STATES COMMISSIONER,
Eastern District of Virginia.

SEAL

(Always give full name of violator)

S P E C I M E N A F F I D A V I T

UNITED STATES OF AMERICA.)
State of _____)
County of _____)
City of _____) ss

On this _____ day of _____, 1936, personally appeared before me the undersigned, John Jones, who, by me being first duly sworn deposes and says: I reside at 122 Bleeker Street, Richmond, State of Virginia, and am a United States Game Management Agent, employed by the United States Department of the Interior, Washington, D. C.

Deponent further says that on March 1, 1936, in company with Mr. John Doe, I entered the store of Mrs. Richard Roe, 12 Main Street, Richmond, Va. A saleslady, whose name I afterwards learned was Susan Smith, approached us. Mr. Doe said "I am returning home in a day or so, and would like to take to my wife a nice plume as a souvenir -- have you any for sale?" The lady said "Yes" and showed several. Mr. Doe said "I don't like those; haven't you some pretty egret plumes?" The lady went to another part of the store and returned with a box from which she took four bunches of plumes and remarked that they were all they had, as they were hard to get. Mr. Doe picked up one and examined it, the lady continuing to explain how scarce they were. She said "These four bunches are all we have; that one you have is \$5; here is a larger and better one that we ask \$12.50 for, but as we want to close them out I can let you have it for \$10." Mr. Doe looked at it and finally said he was undecided, but would think it over and look around a bit more and would probably call later in the day. The lady started to gather them up when I said "Wait a minute - is Mrs. Roe in?" She said "Yes", and called to her. When Mrs. Roe came up I said "Mrs. Roe, I am a United States Game Management Agent. Your clerk here has offered to sell these aigrettes to Mr. Doe, and I will have to seize these aigrettes and report a case against you for offering to sell these aigrettes in violation of the Migratory Bird Treaty Act." She said "I only had those four left and hoped I could get rid of them." I seized the four bunches and gave her a memorandum receipt for them.

JOHN JONES

Subscribed and sworn to before me this _____ day of _____, 1936.

UNITED STATES COMMISSIONER
Eastern District of Virginia.

SEAL

16. Searches and Seizures--As a general rule Agents are without authority to conduct a search for contraband migratory birds, or illegally transported wild animals or parts thereof, unless armed with a search warrant. Contraband birds found in cold storage or elsewhere during the close season may be seized and held for use as evidence, if the Agent has gained entrance into the plant through permission of the owner or superintendent in charge (someone in authority) and violations of the Migratory Bird Treaty Act or other Federal laws are discovered. When an Agent is in possession of sufficient evidence indicating that birds or game are illegally possessed and it becomes necessary to have a search warrant before the evidence can be obtained, application for such warrant should be made to the United States commissioner or Federal judge. The application for a search warrant should describe with particularity the specific establishment, room, building, dwelling, etc., that it is desired to search. No attempt should be made to obtain a search warrant for a dwelling, except on the strongest possible evidence indicating a substantial violation. It is necessary, of course, to submit substantial evidence to justify the issuance of a search warrant for any building or place of business, but the evidence on which to search a dwelling should be practical certainty.

After a search warrant is obtained, it must be served by the officer mentioned in the warrant and be read to the owner or occupant of the premises to be searched. When a search warrant is directed to an Agent he will conduct the search in a thorough and courteous manner, with a demand in the name of the law to permit the search authorized but must confine his operations to the particular room, part of the establishment, etc., set forth in the search warrant. The premises should be left in the same condition as that in which they were found. Any migratory birds, or wild animals, or parts thereof, evidencing a violation discovered during the search, should be immediately seized, the officer leaving a receipt for the property taken. The evidence obtained should be carefully marked and preserved for use in any further proceedings in the matter. At the completion of the search the warrant should be returned to the United States commissioner with notation thereon as to the action taken. A detailed report of action taken under a search warrant should be furnished the Survey.

17. Unlawful Searches--The Act of August 27, 1935, (49 Stat. 877) provides as follows:

"Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment; Provided, that nothing herein contained shall apply to any officer, agent, or employee of the United States serving a warrant of arrest, or arresting or attempting to arrest any person committing or attempting to commit an offense in the presence of such officer, agent, or employee, or who has committed, or who is suspected on reasonable grounds of having committed, a felony."

18. Search of Automobile--An opinion regarding the searching of automobiles, a very important subject, is quoted in full:

"Consideration has been given to the question asked in your letter of April 11, 1934, namely, whether your Game Protectors, engaged in the enforcement of the Migratory Bird Treaty Act, have authority, upon probable cause, without a warrant, to search automobiles believed to be used in the illicit disposition of ducks, and it is my opinion that the question, as you have stated it, must be answered in the affirmative, chiefly because of the assumption therein that the officer named, in making the search without a warrant, is acting upon probable cause, that is, upon a well founded belief that the vehicles to be searched are engaged in a violation of the law.

"The authority to make such a seizure, that is, without warrant and upon probable cause, is not to be found in Sec. 5, of the Migratory Bird Treaty Act to which you refer, for this specifically authorizes the Department employee only, (a) to arrest without warrant, any one violating the Act in his presence; (b) to execute any warrant properly issued; and (c) with a search warrant, to search any place. The right to make such a seizure as you refer to, though not specifically authorized by this section of the Act, is, nevertheless, well established in the common law and needs no statute for its authorization. Although I am satisfied that such a seizure is legal, it is necessary that you should be perfectly clear as to what is meant by 'probable cause' in connection with searches and seizures of this kind.

"From the early days of our history, the Courts have guarded most jealously the right of the people, under the Fourth Amendment to the Constitution, 'to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.' It has been well settled that a search and seizure is 'unreasonable' if made without a warrant and not upon 'probable cause.' What

the necessary probable cause is, which will justify a search and seizure made without a warrant, has been clearly stated in the case of *Carroll vs. U. S.*, 267 U. S., 132, a leading case on searches and seizures, which, though it specifically involved a search under the prohibition law, is equally applicable, in the principles stated therein, to such a search as is now under consideration. On page 149 of this case, is the following:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid."

"While the same case (p. 153) shows that, practically from the beginning of the Government, in construing this constitutional guaranty of freedom from unreasonable searches and seizures, there has been recognized a necessary difference between the search of a store or house and the search of a ship or any other quickly moving vehicle, it is made perfectly plain that the requirements of the necessary 'probable cause' remain unchanged. On pages 153 and 154, the court says:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search ... those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

"In further elucidation of the requirements which are necessary to constitute 'probable cause' the court (page 161) quotes with approval the following from *Stacey v. Emery*, 97 U. S. 642:

'If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient ... The substance of all the definitions is a reasonable ground for belief in guilt.'

"Applying the definitions and explanations thus given of the 'probable cause', which is necessary in order that an automobile may be stopped and searched without a warrant, it is obvious that there is no authority to stop and seize every car moving interstate from ducking areas towards markets where possible illegally possessed ducks may be disposed of, merely because of those circumstances.

It would be manifestly absurd to say, under the rule laid down in the Carroll case (p. 149), that a belief that every automobile 'contains that which by law is subject to seizure and destruction,' could 'reasonably arise' out of the simple fact that the automobile was moving from a ducking area toward a place where such ducks could be disposed of or that such circumstances alone would warrant, to use the expression employed in Stacey v. Emery 'a man of prudence and caution in believing that the offense had been committed.' The Game Protector, in such a case, might indeed suspect or think it possible that every automobile going out of such an area and moving toward such a market was carrying illicitly possessed birds which were about to be disposed of and that an offense was thus being committed, but such a suspicion would be far from the 'probable cause' which the law requires and which must be a reasonable ground for belief in guilt, based on facts known to the arresting officer.

"The zeal of the courts to give protection against search without probable cause may be further illustrated by the principle laid down in the case of Director General vs. Kastenbaum (263 U. S., 25, p. 28). Here it is specifically held that even the proven good faith of the officer in believing that he had probable cause is not sufficient to secure him against a charge of false imprisonment, but that his good faith 'must be grounded on facts' within his knowledge which, in the judgment of the court, would make that good faith reasonable.

"In view of the foregoing, and in enlargement of the opinion already expressed, I would advise you that your Game Protectors are not authorized to stop and search persons or cars merely because they are found to be moving out of a ducking area toward a market where disposition could be made of illicitly possessed birds; they may be stopped and searched only when, as the Carroll case puts it, there is known to them as officials, authorized to enforce the Act, probable cause for belief that such person or vehicle is 'carrying contraband or illegal merchandise.'

"It is most desirable, I know, that the interstate transportation of illegally possessed birds should be stopped, but it would be far worse, in my opinion, for your Game Protectors to employ illegal means in order to secure that desired end."

19. Arrests in General:- An Agent should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If an Agent who acts within the scope of his employment and within his authority is sued on that account, the Department of Justice will be requested to assist in his defense; but, if an Agent knowingly exceeds his authority and gets into difficulties, he must personally arrange for his defense.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. No arrest should be made in trifling or technical cases; but in dealing with such cases great care must be used to avoid the appearance of partiality, and reports of these cases should be forwarded promptly to the Survey. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause an Agent to deviate from his duty of holding violators responsible for their illegal acts.

An Agent may make an arrest when armed with a warrant issued by a Federal court, a United States commissioner, or other officer of competent jurisdiction (see Sec. 1014, R. S., section 7, above), or without a warrant when the offense is committed in the Agent's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the Agent. The details of procedure in making an arrest with warrant and in handling the case after making an arrest without warrant are hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the Agent can do so without danger to himself or of the escape of the accused. When the arrest is made without a warrant for an offense committed within the view of an Agent, he should inform the accused of his identity and of the reason for making the arrest, and furnish the offender with evidence of his identity and authority, i.e., badge or identification card, if requested under the same conditions as reading of warrant.

When an arrest is made with a warrant, under no circumstances may the accused be released but he must be arraigned before the official who issued the process.

It may be unnecessary at the time the offense is committed to make an arrest when the Agent knows the accused, or has at the time so established the identify of the latter that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused and to be certain identification is positive.

When an immediate arrest is not made no warrant of arrest should be obtained, in usual cases, but the Agent should promptly furnish the Survey with his report of the violation, his affidavit of facts, and the affidavit of other material witnesses. This evidence is then transmitted through proper channels to the United States attorney for the District in which the offense was committed, and forms the basis for the filing of an information.

In case the accused is known to, or his identity has been fully established to the satisfaction of the Agent, it is good practice, as a rule, to make no arrest if the accused will agree to appear voluntarily before a United States commissioner at a specified time and will permit the Agent to take and hold for use as evidence, his gun, ammunition, State hunting license, game, or other article or paraphernalia connected with the violation. Even the appearance of an accused before a commissioner should be required only

if circumstances justify, as the accused can be proceeded against by information, as outlined in the preceding paragraph. In such cases the Agent should obtain, if possible, a written confession if the accused is willing voluntarily to make a confession, and, in any event, should obtain a written statement in which the accused agrees, if it shall be deemed necessary, to appear before a commissioner and consents to the Agent holding the articles connected with the violation for use as evidence. If the accused refuses to give such consent and there is danger that he may escape and the articles mentioned are necessary for use as evidence against him, the Agent should make an immediate arrest and take him before a commissioner, in which event the Agent, of course, would seize such of the above enumerated articles found on or used by the accused as may be needed for evidence and hold them for use at the trial.

It is left to the discretion of an Agent as to when an arrest should be made, as it is often more advantageous not to make an arrest for a violation committed in his presence or view, for when an arrest is made and the accused is taken before a United States commissioner or other magistrate, the Agent necessarily must leave the field of activity. If the section wherein the violation is noted is a trouble zone, or if a number of violations are occurring simultaneously, an arrest immediately advertises the Agent's presence in the vicinity, and his chances of continuing his investigations under cover or of returning and apprehending the remaining violators in the area are extremely remote. In some sections it may be expedient to make an arrest, even though an accused has been sufficiently identified to be thereafter apprehended on a warrant, if the violation occurs in a trouble zone or the accused is an habitual game law violator and if an arrest under such conditions would have a salutary effect through the publicity gained by the arraignment. In instances of this nature the Agent's conduct must be governed by the conditions he encounters in the field.

It is not proper to release a person under arrest after making a seizure, and it is always advisable when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the Agent should endeavor to have the offender make a written statement or sign a regular form (after reading it or knowing its contents) showing the nature of the offense for which he has been apprehended, releasing any game seized to a charitable institution, etc., and consenting to the Agent's retaining his gun, ammunition, State hunting license, game, or other evidence connected with the violation, with the understanding that he will meet the Agent in court or before a United States commissioner when notified to appear. The Agent must caution the prisoner that his statement may be used against him in any trial that may result, and should read such statement to him or have him read it before signing.

In other words, when it is planned not to arraign an accused, the Agent should indicate to the accused that such determination is an accommodation to him, as, if he is taken a considerable distance to the office of a United States Commissioner and held for the action of the Federal Court, he would probably be put to the trouble and expense of furnishing bond, or possibly have to remain over night in jail in the event bond could not be immediately obtained, and have the added expense of paying his transportation expenses back home.

When no arrest is made or it is impracticable or unnecessary to take an accused before the commissioner, he will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the Agent's report and affidavit of facts.

In the matter of seizures, when a hunter is under arrest, the fact that the accused intends to plead guilty should not determine the course of an Agent in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that an Agent must have in mind is to obtain sufficient substantial evidence, to establish the identity and guilt of the accused, in order that a conviction may be had. It must also be borne in mind that an accused person may change his mind and plead not guilty at the trial. An Agent may seize, in addition to contraband birds, the gun, ammunition, hunting license, or any other articles found on the person of the accused that may tend to establish his identity or guilt.

20. Procedure in Arrests without Warrant:--The usual mode of procedure is here given, though the practice may vary somewhat in different States, making it necessary for an Agent to familiarize himself with the State laws governing court procedure in his district:

When a violation is committed in the presence or view of an Agent he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the Agent and satisfactory arrangements can be made for him to appear before a commissioner or magistrate at a more convenient time in the near future, if such appearance is deemed necessary by the Agent; such an arrangement should be made only when the Agent is satisfied that the offender will so appear, or, in case of his failure to do so, that he can be easily located and arrested thereafter on a warrant.

Whether the accused is arrested with or without warrant, or his offense is merely noted by the Agent, a report of the case together with affidavits of the Agent and witnesses, if any, should be forwarded promptly to the Survey.

When the offender under arrest without warrant is brought before the commissioner or other magistrate, a complaint should be prepared, sworn to before, and filed with, the official, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel, the accused must plead to the charge either "guilty" or "not guilty." He may waive or demand an examination. Each step in the proceeding will be recorded in his docket by the commissioner or magistrate.

In case of a plea of "guilty", or if examination is waived, the commissioner or magistrate will commit the accused, fix bail immediately, and require him to give bond for his appearance at the next term of the United States court in the district in which the offense was committed. If an examination is demanded, the hearing may be at once, or an adjournment may be set to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the commissioner or magistrate, and bond required for appearance at the examination. If the bond is not given, the

Agent should take the accused to the county or city jail designated in the warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailer as his authority to hold the prisoner, and the original warrant must be returned to the proper court or officer, with the Agent's "return" thereon.

The Agent and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

The commissioner or magistrate, in an examination of an offender, to be authorized to commit need not be convinced beyond a reasonable doubt of his guilt, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused. If the evidence shows the existence of probable cause for believing the accused to be guilty, the commissioner or magistrate should commit him for the action of the United States court in the district where the offense was committed, fix bail, and require bond for appearance in such court. In default of bail being given, the accused should be confined in the jail designated in the warrant of commitment.

A question was once raised by an Agent regarding the procedure and arraignment of accused persons before United States Commissioners when charged with an infraction of the Migratory Bird Treaty Act under certain circumstances, as follows: "If I am on the Illinois bank of the Ohio River and see a violation of the Act committed on the Ohio River (the Ohio River is entirely within the jurisdiction of Kentucky), and apprehend the violator as he lands on the shores of Illinois, and the violator is not known to me, and can not satisfactorily convince me that he can be apprehended later, what am I going to do about it?" An opinion thereon was rendered as follows:

"The Act under which the various United States Game Agents operate is the Migratory Bird Treaty Act approved July 3, 1918, 40 Stat., 755, Section 5, which reads as follows:

'Sec. 5. That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. ***'

"The provision relative to arrests is not restricted, but runs throughout the United States. Consequently, Federal game agents whose work under their appointments is not restricted to any district or section of the country but is general in character, can arrest without a warrant anyone anywhere in the

United States for a violation of this Act committed in their presence. The powers given Federal game agents under this Section are much broader than those granted United States marshals, in that the marshals' power to make arrests for acts committed in their presence is confined to the respective districts for which they are appointed. (Sec. 788 Revised Statutes).

"After a game agent has made an arrest under circumstances similar to the one stated ***, he should immediately take the offender to an officer or court having 'competent jurisdiction' for examination or trial.

"Section 1014, of the Revised Statutes provides:

'Sec. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a Supreme or Superior Court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.'

"The office of Commissioner of the Circuit Court was abolished and the new office of United States Commissioner was created under the Act approved May 28, 1926, (29 Stat., 184). The said United States Commissioners were given all power previously exercised by the Commissioners of Circuit Courts, except as to appointment and fees, and all acts and parts of acts which were applicable to Commissioners of Circuit Courts are likewise applicable to the United States Commissioners.

"The officer having 'competent jurisdiction' under the provisions of this Act would be the United States Commissioner sitting in the Federal district in which the offender is apprehended (U.S. v. Almeida, 2 Wheeler's cr. Cas. 576), which in the instant case would be within the State of Illinois."

21. Procedure in Arrests with Warrant:--When an offense is not committed in his presence or within his view, the Agent should ascertain the material facts and report the case promptly to the Survey with affidavits of the witnesses. If the evidence thus submitted tends to establish that a crime has been committed, it will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person, and in such cases an Agent should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding an arrest.

To obtain a warrant it is necessary to comply with certain conditions in order to give the commissioner or magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before and filed with the commissioner or magistrate.

The complaint should be carefully drawn, showing in the most direct language possible who is alleged to have committed the violation, the time when and the place where the alleged violation was committed, and what acts constituted the offense; and that the acts stated were contrary to the particular Federal statute of which the violation is charged.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of the offense, the commissioner or other magistrate should issue the necessary warrant for the arrest of the accused person, as specifically authorized in Section 5 of the Migratory Bird Treaty Act, Section 202 of the Lacey Act as amended June 15, 1935, Section 6 of the Migratory Bird Hunting Stamp Act, or as provided in Section 1014, of the Revised Statutes.

The warrant for the arrest of the accused may be executed by any Agent or United States Deputy Game Warden to whom it may be directed, or it may be directed to a United States marshal or his deputy. The execution of the warrant consists of taking into custody the person named therein. The Agent should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before an Agent serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

22. Expenses for Executing Process:--When a warrant of arrest or a search warrant issued by a court or officer of competent jurisdiction in connection with violations of the Federal game laws is executed by a United States Game Management Agent or one of his deputies, the expenses of the Agent and of any prisoner prior to his commitment are a charge against funds allotted under his Letter of Authority for carrying out the provisions of the specific act that has been violated.

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by an Agent, the expenses of the marshal and any prisoner are a charge against the appropriation for the Department of Justice, and the expenses of the Agent are a charge against the appropriation for the enforcement of the particular act involved.

The expenses incurred in executing a warrant of commitment, whether by a marshal or an Agent, are chargeable against the appropriation for the Department of Justice. In case a warrant of commitment is executed by an Agent, his expense account should be rendered to the marshal for approval and placing in the way of payment.

When a warrant of any class is executed by a marshal, the Agent must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor from the Survey or the Department of the Interior.

23. Memoranda of Observations--All Game Agents, and all Federal Deputy Wardens when assigned to active duty, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in mind, full and complete notes must be entered in the diary to record observations of the actions of the accused, and any contraband birds, wild animals, guns, or other articles seized must be marked for identification as evidence. The notes must contain the following data:

(1) Full name and address of the accused and any distinguishing marks or characteristics that will aid in his future identification, should he not be well known to the Agent, such as deformity, scars, missing teeth, or fingers, etc.; (2) date and time of day when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds, wild animals, or parts thereof, or hunting equipment seized; (5) statements made by accused when arrested or when seizure was made; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds, reference should be made to the distance between the Agent or Deputy Warden and the accused at the time of the commission of the deed; and, if it occurred at night, the exact time of its commission should be given as shown by the watch of the Agent or Deputy, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be used later in refreshing the memory of the officer when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter. In order that there may be no future question, when an Agent or Deputy Warden in testifying may be compelled to refer to his original notes, as to the time when data in connection with an alleged offense were recorded, he should note at the end of his memorandum statement "These data recorded this _____ day of _____ in the year _____" and sign or initial it.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as if it is to be contested, and leave nothing undone that should be attended to in order to be able to prove the guilt of the accused when brought to trial.

24. Preservation of Exhibits--Contraband birds and wild animals or parts thereof must be seized immediately by an Agent and preserved, if possible, in their original condition for future use as evidence. Such seizures must be marked or tagged forthwith for identification by the Agent making the seizure, with the following information:

(1) Date of seizure; (2) place of seizure; (3) full name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) reason for seizure; (7) witnesses present when seizure was made.

When carcasses of seized dead birds or animals are to be preserved for future use as evidence, they should, promptly after being appropriately tagged, be placed in a convenient cold storage in the name of the United States Department of the Interior, Bureau of Biological Survey; plumage of birds and the skins of fur or other animals should be placed in a package and sealed in such manner that at any time the Agent can swear that the contents of such package are the identical contents that he placed therein, after which it must be safely retained or stored. Whenever possible an Agent should obtain a written agreement from the person from whom birds, animals, plumage, or specimens were seized authorizing them to be turned over to the Biological Survey for disposition for scientific, educational, or food purposes.

In case of furs, particularly valuable shipments, and wild animals and parts thereof, it will be necessary to retain them for disposition by the court upon conclusion of the case. However, if the accused is willing to consent thereto, and signs a release therefor, the bodies of seized animals or game birds should be donated to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates; migratory insectivorous or nongame birds or their plumage should be given to educational or scientific institutions. The Agent should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of birds or plumage thus donated and transmit such receipt to the Survey. In no case should such seized articles be given to individuals or public officials for personal use. (See below for more specific instructions regarding seizure of furs under the Lacey Act.) No seized furs should be disposed of.

Where a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the Agent should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of them is obtained from the violator, they may be preserved by cutting open the abdomen,

removing the entrails and placing them in an ordinary fruit jar filled with a 10 percent solution of formalin. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or water-proof ink should be used in marking tags. After remaining in the jar about a week they can be taken out and the carcasses dried, after which they will practically mummify and keep indefinitely.

Agents should also obtain, whenever possible, a release to the Survey of any live birds or animals that may be seized. Such birds or animals must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Survey directing that they be disposed of by liberation or otherwise.

In cases involving the killing or possession of migratory game birds in excess of the daily bag or possession limit, or shipment during a calendar week in excess of the number authorized by the Federal regulations, all the birds killed, possessed or shipped should be seized and handled in accordance with these instructions.

Unless seized birds, animals, parts thereof, or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the Agent seizing them, and for disposition by the court, and should not be forwarded to the Survey, except in those doubtful cases when it is necessary to have the specimens or plumes identified by an expert.

When convictions are obtained, or a case is finally disposed of in Federal court, unless otherwise directed by the court or the United States attorney, all birds or carcasses of animals fit for human food should be promptly donated to a public charitable institution or public hospital. If unfit for food and of no scientific value, they should be destroyed. The Survey should be informed of the final disposition of seizures.

The court will probably in each case direct disposition to be made of furs. (See paragraph 34, Lacey Act.)

Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the Agent in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked, tagged, and placed where they will not deteriorate or be lost or stolen, so that they will be available at the trial and can be returned to the accused when the case has been terminated.

If for any reason an exhibit is to be placed outside the control or possession of the Agent, he must attach an indestructible marker thereon, so that when it is returned to him he will be able to identify it as the one he had previously in his possession,

The seizure of automobiles, airplanes, vehicles, boats, or other transportation facilities used in the illegal transportation of furs, etc., under the Lacey Act is not contemplated.

25. Birds in Storage:-It is desired to keep down to a minimum the expenses incident to stored birds, carcasses of animals, or parts thereof. The Survey can not be held accountable for unpaid storage charges on seized birds, carcasses of animals, or parts thereof at the time of such seizure. Only such storage charges as accrue on and after the date such seizures are made can be paid by the Survey. Accounts covering storage charges should not be allowed to extend from one fiscal year to another, but all accounts should be rendered promptly at the close of the fiscal year for charges accruing during that period.

26. Purchase of Birds or Plumage as Evidence:-It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, because of the fact that it is unlawful to offer for sale, or to sell, migratory birds or parts thereof. The law authorizes the immediate seizure of birds and parts thereof that have been offered for sale. Agents, therefore, must not, except in rare cases and after conferring with a U. S. Attorney to obtain approval, purchase birds or parts thereof to establish violations, but should immediately seize and hold for use as evidence all such birds or plumage they find offered for sale. Birds and plumage so seized may be disposed of to institutions in the same manner as outlined in the second paragraph of Section 24, on "Preservation of Exhibits."

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence of sale against him, even though evidence of a sale violation can be obtained in no other way, holding such cases to be "induced violations." In other jurisdictions the judges and United States attorneys hold a contrary opinion. Game Agents should, therefore, become familiar with the attitudes of the Federal judge and United States attorney in their respective districts on this question.

27. Possession of Birds and Plumage Acquired before and since Treaty Act Became Effective:-The provisions of Section 2 of the Migratory Bird Treaty Act, prohibiting the possession of migratory birds, or parts thereof, and their nests and eggs, are sufficiently comprehensive, in the opinion of the Bureau, to include the possession of the same, whether acquired before or since July 3, 1918, the date on which the Act became effective. It is not the policy of the Bureau, however, to enforce this construction of the statute where a bona fide acquisition of such birds, etc., occurred prior to July 3, 1918, and no attempt to sell them has been made since such date.

The provisions of Section 2, which make it unlawful to OFFER FOR SALE, SELL, OFFER TO PURCHASE, PURCHASE, etc., apply to migratory birds or parts thereof, without regard to the time when the ownership or possession was acquired.

A person, therefore, who owned and possessed migratory birds or parts thereof, and their nests and eggs, as above outlined, prior to July 3, 1918, will not be disturbed in the possession thereof by the Bureau so long as he retains this possession for his own use, and will not be required to obtain either Federal scientific or propagating permit to legalize such possession, but the Bureau will be insistent that such birds or parts thereof, and their nests and eggs, shall not be sold, offered for sale, or otherwise trafficked in without a permit.

When live or mounted specimens of migratory birds or parts thereof, and the nests and eggs of migratory birds, are found in the possession of any person, it is very important to determine (1) the date when ownership and possession thereof were acquired, and (2) whether any overt act forbidden by the Treaty Act, such as the sale or the offer for sale of the birds or parts thereof, their nests and eggs, has been committed since July 3, 1918. If the birds or parts thereof, and their nests and eggs have been sold or offered for sale in violation of the law, the necessary affidavits and reports should be furnished the Bureau.

No seizure should be made, or any action taken other than to report the facts to the Bureau in cases where birds or parts thereof, their nests and eggs, were possessed before July 3, 1918, and there is no substantial evidence showing that the birds or parts thereof or their nests and eggs have been sold or offered for sale in violation of the law; but the birds or parts thereof and their nests or eggs should be seized if substantial evidence is obtained of such sale or offer for sale.

28. Indian Reservations.--Indians are not privileged to hunt contrary to the Migratory Bird Treaty Act regulations or hunt without complying with the provisions of the Migratory Bird Hunting Stamp Act either on or off their reservations, and field personnel will see that these statutes are obeyed.

Before visiting Indian reservations the Agent should report to the superintendent and advise him that he is there to make investigations with a view to ascertaining whether the Federal laws are being complied with by the Indians and whites alike. If it is not possible to make positive identification of an Indian caught violating the Federal game laws so that he may thereafter be apprehended on a warrant then he may be arrested and arraigned before the nearest United States Commissioner for examination. A prompt report accompanied with affidavits regarding individuals apprehended committing violations on Indian reservations should be sent to the Survey.

If an Indian wishes to enter a plea of guilty, and Federal Court is in session, or about to convene, and the United States Attorney approves, he may be taken into Federal Court at that time.

Whenever possible field officers will visit superintendents in charge of Indian Reservations, acquaint them with the provisions of the Federal laws, see that they receive copies of regulations together with copies of open season posters, and seek their aid in seeing that the laws are observed on such reservation by everyone, including the Indians.

29. Indians Amenable to Law:--A memorandum by the Commissioner of Indian Affairs, on March 17, 1936, to Superintendents of Indian Reservations under the jurisdiction of that office is as follows:

"The Bureau of the Biological Survey *** requested that the Migratory Bird Treaty Act and the Federal laws relating to the protection of wildlife be brought to the attention of Indian reservation Superintendents, with special reference to the seasons, bag limits, species of birds and other restrictions of the Migratory Bird Treaty Act and its regulations.

"Under the Solicitor's opinion of June 15, 1934, it was held that the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. L, 755) is binding upon the Indians as well as others, irrespective of where the migratory birds may be found. It is suggested therefore, that you become familiar with the Migratory Bird Treaty Act Regulations, 1935, and the Text of Federal Laws relating to the protection of wildlife, enclosed herewith, making conscientious effort to see that they are obeyed.

"This is to be discussed by you with the tribal council or other representative tribal groups and employees for the purpose of their information and dissemination thereof generally."

30. Examination of Express Records:--Game Agents should experience little difficulty in making examination of express records, as the vice-present of the American Railway Express Company under date of Sept. 30, 1920, advised the operating vice-presidents that the general rules and instructions of the company authorized agents to furnish officers and agents of the Federal government information regarding transportation of property in interstate commerce.

Care should be taken not to antagonize express company agents in the event that the Game Agent's authority is questioned. If an agent of the express company unreasonably refuses to give an opportunity to examine express records or to give assistance to determine whether game or fur in possession of the company is being illegally shipped in interstate commerce, the facts should promptly be reported to the Biological Survey.

The practice of the local agents of the express company is to forward within a few days to the district auditing office billings covering outgoing shipments, and in a general examination of express records in a given region it is necessary to visit the main office for the division from which the shipment was made to conduct such work. As several States are usually included in each division, it is necessary in most instances to have the Agents in the field report on points from which they desire records examined and the Survey can arrange with the Agent in the district in which the headquarters of the division office is located to make a general inspection once or twice a year or as occasion demands and obtain affidavits of express officials and copies of waybills covering shipments under investigation.

31. Mail Shipments:--The Post Office Department issued the following amendment to Section 593, of the Postal Laws and Regulations, effective May 1, 1936:

"1. Postmasters shall not accept for mailing any parcel containing the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any such birds, which have been killed or taken or are offered for shipment contrary to any law of the United States or of any State, Territory, District of Columbia, or foreign country, or State, Province, or other subdivision thereof: Provided, however, That the foregoing shall not be construed to prevent the acceptance for mailing of the dead bodies, or parts thereof, of any wild animals or birds, or the eggs of any wild birds, killed or taken during the season when the same may be lawfully killed or taken and the shipment of which is not prohibited by law in the State, Territory, District, or foreign country, in which the same are killed or taken or offered for shipment.

"2. Parcels containing the dead bodies of any game animals, or parts thereof, including furs, skins, skulls, or meat; or of any game or wild birds, or parts thereof, including skins or plumage, or the eggs of any such birds, may be admitted to the mails only when plainly and clearly marked or labeled on the outside thereof with the names and addresses of the shipper and consignee (addressee), and with an accurate statement showing by number and kind the contents thereof: Provided, however, That fresh game in any form may be accepted for transmission only to post offices to which, in the ordinary course of mail, it can be sent without spoiling. (See Sec. 591.)"

32. Construction of Game Laws Governing the Transportation and Importation of Wild Birds -- Native and Foreign:--Section 2, of the Migratory Bird Treaty Act prohibits the shipment, transportation, etc., of any migratory bird or parts thereof, including the plumage, except as specifically permitted by regulations adopted by the Secretary of the Interior.

Section 4, of the Act prohibits the interstate shipments, transportation, etc., by any means of any birds (migratory or non-migratory) or parts thereof contrary to the laws of the State in which they were captured, killed, or taken, or from which they were shipped, transported, or carried, and the importation of any birds, etc., captured, killed, transported, etc., contrary to the laws of any Province of Canada and covers the shipment by any means whatever and the shipment of live birds as well as the dead bodies.

A violation of Section 4 is predicated on a violation of a State law or law of a Province in Canada. In other words there can be no violation of Section 4 unless the acts committed were in violation of the law of the State or Province in which the birds were taken or from which they were shipped or transported.

The provisions of Section 2 must not be confused with the provisions of Section 4. Section 2 relates solely to migratory birds, and a violation of this section is not predicated on a violation of State law.

No change was made in Section 241 of the Lacey Act regulating the importation of live wild animals or birds from a foreign country. Violations of this section are not predicated on a violation of the law of any State or any Province or sub-division of a foreign country.

The provisions of Section 243 relate to the markings of packages in which wild animals or birds or the dead bodies or parts thereof or the eggs of birds are contained for interstate or foreign commerce. A violation of Section 243 is not predicated on a violation of State law and this section applies to the marking of packages containing wild animals or birds or parts thereof whether native or foreign species. Shipments by parcel post from one State or country to another are shipments in "interstate or foreign commerce" under Section 243.

Marking packages containing migratory birds or parts thereof is also covered by Section 2, of the Migratory Bird Treaty Act. The regulations provide that any package containing migratory game birds lawfully killed, or propagated waterfowl or parts thereof, or their eggs or specimens of migratory birds for scientific purposes, when transported shall have plainly and conspicuously marked on the outside thereof the name and

address of the shipper and consignee and an accurate statement of the number and kind of birds, or eggs contained therein.

The provisions of the Tariff Act prohibit the importation of the plumage and skins of wild birds or parts thereof, including plumage and other parts of wild birds. This law is enforced by officials of the Custom Service and has no relation to the provisions of Section 241 of the Lacey Act relating to the importation of live birds.

33. Fur Inspection--Agents should regularly visit the large raw-fur receiving houses in their districts with a view to examining records of fur receipts to discover illegal shipments of skins of beavers and other fur animals. As there is no provision in the Lacey Act compelling fur houses to open their records for inspection, and Agent in order to gain access to such records must be very tactful in his dealings with the concerns. Many dealers, however, will exhibit their records. A fur dealer who seems disinclined to extend the courtesy should be advised that his cooperation will aid the Federal Government and the States in efforts to conserve the supply of fur animals, resulting in a better grade of furs reaching the market and at the same time will keep the dealer from being placed in a position of shielding law violators of this character. Such information as appears to cover illegal shipments which it may be advisable to submit to State game departments should be copied on Form Bi-968, and submitted to the Survey, where it will be viewed and then forwarded to the interested States, or to other Agents for investigation.

34. Lacey Act--Section 242 of the Penal Code (the so-called "Lacey Act") was amended and greatly broadened by the Act of June 15, 1935, (49 Stat. 380) with respect to the interstate shipment of wild animals and birds, to include live animals and birds, as well as the dead bodies or parts thereof, and the eggs of birds; to include transportation by any and all means (formerly limited to transportation by common carrier); and to prohibit transportation from one State to another, including any Territory and the District of Columbia, or any wild animal or bird or the dead body or part thereof, or the eggs of birds, that have been purchased, sold or possessed, as well as killed, taken, or shipped, contrary to the law of any State, etc., Province, or subdivision of a foreign country in which it was killed or taken, or from which shipped. A violation of the section is also predicated on a violation of State law or the law of a Province or subdivision of a foreign country except that portion of Section 242 relating to the making of a false record or rendering of a false account which is independent of State law.

A new provision was inserted in the amendment to the Lacey Act to prohibit consignees from knowingly purchasing any wild animal or bird, or the dead body or part thereof, or the eggs of any such bird imported from a foreign country, or shipped, transported, carried, brought or conveyed in violation of Section 242. The consignee is also precluded from making any false record or rendering any account that is false in any respect in reference to any wild animal or bird, or the dead body or part thereof, or the egg of any such bird, that has been imported from a foreign country, or shipped, transported, or carried in interstate commerce.

The powers of arrest and seizure and the holding and disposition of seizures are covered under Section 202.

Section 243 as amended June 19, 1939, is as follows:

"All packages or containers in which wild animals or birds, or the dead bodies or parts thereof (except furs, hides, or skins of such animals, for which provision is herein&fster made), or the eggs of such birds are shipped, transported, carried, brought, or conveyed, by any means whatever from one State, Territory, or the District of Columbia to, into, or through another State, Territory, or the District of Columbia, or to a foreign country, shall be plainly and clearly marked, labeled, or tagged on the outside thereof with the names and addresses of the shipper and consignee and with an accurate statement showing by number and kind the contents thereof: Provided, That packages or containers in which migratory birds included in any convention to which the United States is a party, or the dead bodies or parts thereof or eggs of such birds, are shipped, transported, carried, brought, or conveyed, as aforesaid, shall be marked, labeled, or tagged as prescribed in any such convention or law or regulation thereunder.

"All packages or containers in which the furs, hides, or skins of wild animals are shipped, transported, carried, brought, or conveyed, by any means whatever, from one State, Territory, or the District of Columbia to, into, or through another State, Territory, or the District of Columbia, or to a foreign country, shall be plainly and clearly marked, labeled, or tagged on the outside thereof with the names and addresses of the shipper and consignee."

In enforcing Section 243 of the Act it is expected Agents will exercise judgment and discretion. Doubtless there may be cases where the circumstances surrounding the shipments might seem to indicate that the omission to mark (where required) was due to absolute ignorance of the law without any purpose to evade the statute and where, if the statute had been in the mind of the shipper, there would have been no reason whatever for deliberately omitting the marking. In such instances it is well enough to make note of the omission and make a report thereof to the Survey.

Any skins seized must be placed in cold storage at a temperature about 25 degrees to 30 degrees F., free from rats or other vermin, and held for action of the court. No furs once seized should be returned unless authority to do so has been granted by the Survey after study of the facts. The wrapper on a package or container should be preserved as evidence with all the original markings and tags, if any. Affidavits and a complete report in connection with any seizure should be furnished the Survey as promptly as possible as this class of cases, in the very nature of things, must be handled as expeditiously as possible.

Where there is doubt regarding its legality or illegality it would be safer to allow a package containing furs or the meat or other parts of wild animals, to continue to destination than to seize it. Notation can be made of the markings, waybill, etc., so that thereafter the Agent can

furnish his affidavit based on such facts, if further investigation discloses a violation was committed. In some instances a fur house or other establishment may cooperate by holding such package for a few days pending completion of investigation and if found to be unlawful the original package could then be obtained.

Seizures of furs shipped contrary to the Lacey Act, as amended, must be handled on a different basis, mainly because of their commercial value and the provisions of the law. Large shipments are likely to be quite valuable, and it is seldom necessary to impose sole responsibility upon the Agent in the field for their disposition. It will be possible in connection with furs simply to detain the shipment, report the full facts to the Bureau, and obtain specific instructions for its disposition.

Where illegal shipments or suspected illegal shipments have reached the hands of consignees and are still on hand and subject to seizure under proper authority the consignee might be told it may be desirable to withhold checks or remittances in payment therefor until all questions of legality of shipment have been cleared up.

Where legal furs are commingled with illegal furs in an interstate shipment and it is not possible to separate one from the other the entire shipment can be held.

Illegal furs entering commerce that have been purchased and paid for by the consignee, if they can be positively so identified, should be seized wherever found, except in the hands of an innocent third party purchaser. Evidence of such shipments should be reported for transmittal to proper authorities. Invoices and cancelled checks issued in payment therefor, together with shipping evidence, are essential.

Falsification of records of the receipt of wild animals or birds, or parts thereof that have been carried, shipped, or transported in interstate commerce, or the rendering of false accounts with respect thereto, by consignees, unless the shipment was illegally made, does not justify seizure of the shipment with respect to which the false record or false account has been made or rendered.

Failure to mark or the mis-marking of shipments for interstate transportation are ordinarily strictly Federal violations.

No seizure of illegal skins or animals from consignees can be returned to the States from which made. They must be held for disposition by the Federal Court at the time of conclusion of the case.

35. Duck Stamp Act:--The Migratory Bird Hunting Stamp Act of March 4, 1934 (48 Stat., 451) as amended June 15, 1935 (49 Stat. 379) makes it necessary for all individuals over 16 years of age hunting wild ducks, geese, and brant to have on the person while so hunting a stamp issued by postmasters, the fee for which is \$1.00. The stamp must be validated by the hunter writing his name across its face in ink. Any hunter afield with a stamp not so validated should be asked to write his name on the stamp.

If the request is not forthwith complied with or there is good reason to believe he is hunting with a stamp of another person, the stamp should be seized and arrest made if circumstances justify. A report should be sent to the Survey. No person over 16 years should be permitted to hunt without the stamp. Agents should check daily all waterfowl hunters in the field to see that they have the stamp, and reports of cases justifying Federal prosecution should be sent to the Survey.

Power of arrest under this Act is set forth in Sec. 6.

36. Migratory Bird Conservation Act--The Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222) authorizing the establishment of a system of national refuges for migratory birds is administered by the Bureau's Division of Wildlife Refuges, and special instructions thereon have been issued to the enforcement personnel of that division. Game Agents should cooperate as far as possible in the protection of migratory birds on these areas. Police power is conferred by Section 13.

37. Protection of Wild Animals and Birds and Bird's Eggs and Government Property on Federal Refuges--Section 145, Criminal Code and Criminal Procedure, Title 18, U. S. Code, which has relation to areas set aside as refuges or breeding grounds for wild animals and birds, and is administered by the Biological Survey, is as follows:

"Section 145. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird or wild animal of any kind whatever, or take or destroy the eggs of any such bird on any lands of the United States which have been set apart or reserved as refuges or breaking grounds for such birds or animals by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture /Interior/, may, from time to time, prescribe, or who shall willfully injure, molest, or destroy any property of the United States on any such lands shall be fined not more than \$500, or imprisonment not more than six months, or both. (Sec. 84, Act of March 4, 1909, as amended April 15, 1924, 48 Stat. 98)".

Police power to handle trespassers on bird and game refuges and reservations is derived from Sec. 13, of the Migratory Bird Conservation Act (45 Stat. 1222).

Prosecutions for infractions thereof are generally instituted by the filing of an information. Agents should obtain and furnish the Survey with witness affidavits regarding any violations of this section that may come to their attention and cooperate fully with reservation protectors and rangers. (Sec. 10 of the M.B. Conservation Act also relates to trespass on wildlife refuges.)

38. Assault Act--An amendment to the Act of May 18, 1934, (48 Stat. 780) was approved on February 8, 1936, so as to include within its terms any officer or employee of the Department of Agriculture /Interior/ designated by the Secretary of Agriculture /Interior/ to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals.

The Act makes it unlawful forcibly to resist, oppose, impede, intimidate, or interfere with an officer engaged in performing official duties, or assault him on account of such duties, and fixes the penalty at not more than \$5,000, or imprisonment for not more than three years, or both. If a deadly or dangerous weapon is used, the penalty is not more than \$10,000, or not more than ten years' imprisonment, or both.

Where an officer is killed in line of duty, the penalty is, as provided in Section 275, of the Criminal Code, upon conviction, for murder in the first degree, death; for murder in the second degree, imprisonment for not less than ten years or life; for voluntary manslaughter, imprisonment for not more than ten years; for involuntary manslaughter, imprisonment for not more than three years, a fine not exceeding \$1,000, or both.

The Statute, as amended, (49 Stat. 1105) reads as follows:

"That whoever shall kill, as defined in Sections 273 or 274, of the Criminal Code, any United States marshal or deputy United States marshal, special agent of the Federal Bureau of Investigation of the Department of Justice, post office inspector, Secret Service operative, any officer or enlisted man of the Coast Guard, any employee of any United States penal or correctional institution, any officer of the Customs Service or of the Internal Revenue Service, any immigrant inspector or any immigration patrol inspector, any officer or employee of the Department of Agriculture /Interior/ designated by the Secretary of Agriculture /Interior/ to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Division of Grazing of the Department of the Interior, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under Section 275, of the Criminal Code."

"Sec. 2. Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person designated in Section 1, hereof while engaged in the performance of his official duties, or shall assault him on account of the performance of his official duties, shall be fined not more than \$5,000, or imprisoned not more than three years, or both; and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both."

No police power is conferred on Department employees under this Act. Proceedings can be instituted, however, by filing a complaint with a U. S. Commissioner, but doubtful cases should be taken up with the U. S. Attorney.

39. Black Bass Law:--The Hawes law (44 Stat. 576) regulating the interstate transportation of black bass caught, sold, purchased, or possessed contrary to the law of the State, Territory, or District of Columbia wherein the delivery of such fish for transportation is made, is committed to the Bureau of Fisheries for administration. Any violations of the act that come to the notice of Agents should be reported to the Survey.

40. Bait and Parts of Birds:--In the prosecution of any person for shooting doves or waterfowl over or by means of bait it is necessary to have for presentation as evidence at the trial some of the grain or other foods recovered by Agents that had been scattered or placed on the area over which shooting was done. For this purpose only a small quantity would be required, and this could be placed in a glass jar or other receptacle after being appropriately marked on the outside to indicate the field from which taken, the date taken, and the names of the persons who were hunting.

In connection with the purchase of meals at which game birds are served it is necessary to save a few bones from migratory game birds that may be furnished by hotels or restaurants. Such bones, where there is any doubt as to the particular species of waterfowl involved, should be forwarded to the Survey by registered mail in order that they may be identified by an expert, after which the bones will be returned to the Agent for use as evidence at the time of trial. The United States Attorney will be furnished with an affidavit from the Bureau expert who examined the bones and identified them as being parts of migratory game or other birds afforded protection under the Migratory Bird Treaty Act.

41. Youthful Violators:--When three Migratory Bird Treaty Act cases were called for trial in a Federal court, it developed that the offenders were boys of 14 and 15 years of age. When the cases were submitted to the Bureau the report gave the age of each boy as more than 18 years, otherwise they would never have been reported for Federal prosecution. The submission of cases of this character to Federal courts generally results in no benefit and often in just criticism, and takes up considerable time of the prosecuting officials.

It is not the practice of the Bureau to report for prosecution cases wherein the offenders are less than 18 years of age unless the offenses committed are of a very serious nature and every other recourse has been exhausted. Many offenses by youths are inconsequential and neither require nor justify bringing the boys into Federal court. It is believed that any small fine imposed would not deter boys from committing violations in the future; and would undoubtedly result in the assumption of an antagonistic attitude toward the enforcement of the game laws and disrespect for Federal conservation officers.

There is no doubt that the air rifle and the sling shot play an important part in the destruction of a number of our migratory birds. The ambition of youth seems to be for a display of marksmanship, and the difficulties of repressing these actions by young America has been

ever present. Two remedies present themselves, however, (1) the presentation of the matter to the parent or guardian of the offender or (2) reference to the United States attorney. It has been the Bureau's experience that the parents are usually willing to lend a helping hand in an effort to curb the more or less pernicious activities of their children. Where it develops that a parent contemplates placing no restrictions upon his child in connection with the destruction of migratory bird life, then the Agent should discuss the matter with the United States attorney and endeavor to have this official require the boy to appear before him, at which time he could explain the object and purposes of the Federal game law and the necessity for his strict observance of it.

Reports to the Bureau on cases against boys should be accompanied by Form Bi-300, in which should be shown the age of the boy and also whether he is attending school or is employed.

42. Cold-Storage Cases--In connection with the possession of migratory waterfowl in cold storage during the Federal close season, proof should be furnished the Survey that the seized birds had been placed in storage by the person whose name is given on the package or that they were put in storage by another acting under his authority. An affidavit to this effect (giving the date the birds were placed on storage) should be obtained, if possible, from the manager of the storage plant or other person in charge having personal knowledge of the fact. In addition the Agent should interview the accused, if convenient, in an effort to procure a signed release for such birds, or an admission of ownership, which, if verbal, should be included in the Agent's affidavit. If it is not possible personally to interview the accused, the matter of procuring a release should be taken up with him by correspondence.

If Agent has reasonable grounds to believe that certain lockers in a cold storage plant contain migratory game birds in violation of law, he should present himself before the Federal court, a United States Commissioner, or other duly authorized officer, and make application for a search warrant, stating sufficient facts in connection therewith, under oath, and his reasons therefor, to establish the constitutional basis of probable cause. The court is the sole judge of the facts presented, in determining whether there is probable cause to justify the issuance of a search warrant. An Agent should state the names of the holders of the individual lockers to be searched, so that they may be sufficiently described in the warrant, and thereby avoid the possibility of entering and examining lockers not covered by the search warrant.

The officer authorized to execute such warrant may use reasonable force to gain entry to lockers described in the warrant, in case the custodian of the cold storage concern refuses to permit entry to same. In this connection, a search warrant is an order of the court, and if the cold storage concern refuses to comply with its demands, it may be held in contempt of court.

43. Spite Cases:--Where the sole evidence in connection with an offense consists of an affidavit by an individual, unsupported by affidavit of a U. S. Game Management Agent or Deputy Agent, U. S. Deputy Warden, or State Warden, it will be necessary for the Agent or Deputy to furnish a statement indicating that the violation was actually committed by the accused and that the affidavit was not furnished as a result of spite work or personal enmity. An Agent should endeavor to obtain sufficient evidence to substantiate the facts related in the witness affidavit and should in all cases interview the accused or else write him for his version of the matter and then submit to the Survey any communication or affidavit received as a part of the evidence in the case.

44. Reporting Violations:--There should be as little delay as possible in forwarding cases for prosecution, as stale cases are not looked upon with favor by courts and prosecuting attorneys.

Witness affidavits and reports of cases or violations should be sent direct to the Survey at Washington with a carbon copy to the Regional Director. When a case has been filed direct with the United States Attorney, a copy of the affidavits and report should be sent to (1) the Bureau and (2) the Regional Director.

In order to have a uniform procedure and insure that an Agent will be informed of activities in his territory, details of all future apprehensions of and institution of prosecution in Federal courts by other than Division of Game Management personnel against violators of the Migratory Bird Treaty Act, Migratory Bird Hunting Stamp Act, Migratory Bird Conservation Act, Lacey Act, and the law protecting wild animals and birds and their eggs and government property on Federal refuges (U. S. Code, Title 18, Sec. 145) should be reported immediately to the U. S. Game Management Agent for the District accompanied by witness affidavits.

Reports of violations of any type discovered by refuge personnel either on or off a refuge should be submitted to the Refuge Manager, who will forward the file direct to the Game Agent, with a copy to the Regional Director, except in the case of the Upper Mississippi River Wild Life and Fish Refuge.

With respect to the Upper Mississippi River Wild Life and Fish Refuge, the procedure in effect since its creation will be followed, and the Agent in that district need be furnished only with a copy of the Superintendent's letter of transmittal to the Survey.

Where it is considered expedient by a Refuge Manager to prosecute violators in State Court, he may do so, and a Bi-300 report of the termination thereof will be furnished the Game Agent and the Regional Director, as soon as possible thereafter. In turn, the Game Agent will forward to the Washington office Bi-300 reports of all violations in his district in which Survey personnel participated.

45. Handling Cases Direct:-- The Survey has no objection to Agents furnishing United States attorneys with witness affidavits covering offenses wherein an accused has expressed a willingness to enter a plea of guilty and when court is in session or about to convene, provided such procedure has the approval of the prosecuting attorney. In all cases of this character, however, on the filing of the evidence with the United States attorney the Survey must be immediately advised and furnished with a copy of the witness affidavits so that the Survey in turn may submit it to the Solicitor of the Department, who will promptly take the matter up with the Department of Justice.

46. Interest in Cases:--An Agent's interest in a particular case should not lapse after submission of evidence to the Survey and the case has been forwarded for prosecution. Cases have been known to lie dormant for long periods. When an Agent is at a point where Federal court meets and in a district where cases obtained by him are known to be pending, he should call at the clerk's office and ascertain their status, and take up with the United States attorney or his assistant the matter of pending cases to ascertain whether arrangements can be made for their early disposition.

In this connection an Agent should remember that the prosecuting attorney is busily engaged with various kinds of prosecutions and therefore the Agent should be tactful in his dealing with this official. He should not offer any criticism of the manner in which cases are handled but answer all questions and in a general way give any information the attorney may desire. Agents are not authorized to agree to the dismissal of cases. The United States attorney should make his recommendations in such matters through the Department of Justice.

47. Concealed Weapons:--Firearms are furnished to Game Agents as a means of self-protection to be carried when on active duty, and they must not be used unless there is impending danger. It is not permissible for an Agent to use a pistol or gun as a means of compelling an offender to obey his command to halt.

A commission as U. S. Deputy Game Warden does not, in itself, give the right to carry a revolver or pistol at all times. There is no Federal statute specifically authorizing Federal officers to carry firearms, but, in some instances, where such officers have been arrested by State officials when in the discharge of their official duties, the courts have held that the right conferred by law to make arrests impliedly gives Federal officers all rights and powers necessary to enforce the authority conferred upon them, and that when they are engaged in the enforcement of a Federal statute they are not bound by a State law prohibiting them from carrying concealed weapons.

The Bureau does not permit its deputy game wardens to carry concealed weapons, except for personal defense when in the discharge of their official duties. If, at any time, a deputy game warden should be placed on per diem

duty by the Bureau to enforce the provisions of the Migratory Bird Treaty Act, we are of the opinion that he would then have the right to carry a concealed weapon while on such active duty, to be used, when necessary, in the defense of his person, and that a State law prohibiting the carrying of such concealed weapon would not then apply. On all other occasions, however, he must comply with the provisions of the laws of the State in which he may be when he desires to carry a revolver or other firearm.

48. Attendance at Meetings and Delivery of Lectures--A Game Agent may attend meetings in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to his work and the Federal game laws. Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Survey permission to do so.

49. Fees--Directors or Agents who testify in any judicial proceeding in Federal or State courts in any case involving violations of the Federal game laws, or in cases originating in the Department, shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations.

When an employee appears in cases between private parties or by some party other than the Federal Government where the employee is called upon solely because of and to testify in his official capacity or to produce official records or information, fees and expenses should be accepted but all amounts so collected over and above the amount of actual and necessary expenses, a statement of which must be furnished the Chief of the Bureau, must be turned into the Treasury as Miscellaneous Receipts.

When an employee appears as a witness on behalf of the United States in any case not originating in this Department, his account for travel and subsistence prepared on a special form furnished by the U. S. Marshal, should be presented to the marshal or other officer of the court authorized to pay the expenses of witnesses.

When an employee appears in any judicial proceedings on behalf of any party other than the United States, he should arrange in advance with the party in whose interest he appears for his travel and subsistence expenses.

United States Game Agents must not accept any fees, parts of fines, rewards, or remuneration of any kind as payment or reward for obtaining or assisting in obtaining cases involving violations of State or Federal game or fish laws.

50. Reports--Agents must also forward to the Survey and to the Regional Director at the end of each week, on blanks furnished for that purpose, a summary report containing detailed statements of their activities during each week and the results accomplished. These reports must be in sufficient detail to give information as to the actual work performed and results accomplished each day, together with time of arrival at and departure from points between which travel is performed.

Deputy Game Wardens must render weekly reports on blanks supplied, during the time they are actually employed.

51. Itinerary---The Regional Office should be kept informed of an Agent's itinerary while absent from headquarters so he can be easily reached in an emergency, unless detailed instructions in that regard have been given to some one at his office or home address.

52. Care of Property---Care should be exercised in preventing the loss or theft of badges, pistols, binoculars, or other equipment, as lack of ordinary care will probably make it necessary to require an employee to pay for such lost property. An unscrupulous person with a badge could reap personal gain by impersonating a Federal officer.

53. Writing Accusatory Letters---In the investigation of violations of the Federal game laws, Agents and Deputies must not write letters accusing persons of having violated, or warning them not to violate the law. Several accusatory letters couched in sarcastic language have been written by some of our employees to persons warning them they they would get into trouble with the Government if they persisted in violating the law. The Bureau can not countenance this practice.

When there is reason to believe that any person has committed a violation, it is the duty of Agent or Deputy promptly and vigorously to investigate the matter. The investigation should be conducted in a quiet, orderly manner and, if possible, without the knowledge of the supposed violator. When the investigation discloses that a violation has been committed and it is desirable to obtain, if possible, a signed statement from the accused person in order to strengthen the case against him, or a reasonable doubt exists in regard to the guilt of such person, it is proper for an Agent or Deputy to interview or write to the suspected person for the purpose of obtaining any statement he may care to make concerning the transaction. The entire investigation should be conducted, however, in a dignified manner and in a way least calculated to give offense to any person.

54. Correspondence and Telegrams---Original letters from United States Attorneys and their assistants in regard to game law cases, together with copy of the Agent's reply, if any, should be furnished the Survey.

All letters to the Survey should be directed to the "Chief, Biological Survey, Washington, D. C." Communications should be sent to no other Department or Bureau of the Government at Washington.

All telegrams to the Survey should be directed to "Biological Survey, Washington." Telegrams should be used sparingly, but Agents should not hesitate to use them in emergency cases where an airmail letter will not suffice, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotments, except in emergencies, or, at government expense in respect to annual or sick leave, or leave without pay.

When writing to the Survey letters containing information that must be submitted to another Agent for further investigation, Agents should furnish an original and one carbon copy.

No letter should embrace matter concerning more than one subject or case. A separate letter should be written on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case or subject involved.

No individual's name should appear on any letterhead used in the Department.

55. Transportation Requests:--Transportation requests should be used in paying for railroad transportation (and for air travel where justified), except when it may be necessary to pay cash fare in order to conceal the identity of an Agent.

56. Leave of Absence:--Department Regulations relating to leave must be strictly followed. Deputy Wardens and temporary employees are not entitled to leave of absence.

57. Personal Conduct:--Employees shall at all times conduct themselves in a manner so as to avoid embarrassment to or criticism of the Department or interference with the efficient performance of duties. For example, any employee of the Department whose duties require the enforcement of laws or regulations or who are in a position to award or influence the award of business or to grant or influence the granting of favors, should not accept from any person, firm, or corporation with which he has official relations any favor, gift, loan, unusual discount, gratuitous service, or other thing of value; nor should any employee of the Department give or use information acquired by means of his official position to advance the interests of himself, his family, his business associates, or his personal friends over those of other persons.

58. Political Activity:--Political activity on the part of Agents will not be countenanced. Sections 9 and 9A of the Act of August 2, 1939, are as follows:

"Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the

President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

"(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

"Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

"(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

59. Temporary Assistant:--A temporary assistant hired under letter of authority does not possess powers conferred by Section 5, of the Migratory Bird Treaty Act, Section 202 of the Lacey Act, Section 6 of the Migratory Bird Hunting Stamp Act, or Section 13 of the Migratory Bird Conservation Act to make arrests or seizures, or otherwise to exercise police powers in the enforcement of any of these acts. Only those persons specially authorized by the Secretary may exercise such police powers, but a temporary assistant may render aid to a regular employee in making an arrest. Such temporary assistant would be a competent witness.

60. Efficiency:--An Agent is rated upon efficiency, and in fixing ratings the following matters will be considered:

- (1) The status of game law observance in his district.
- (2) General activity in the district covered.
 - (a) The sufficiency and completeness of evidence gathered upon which to base prosecutions.
 - (b) Knowledge of the law and of conditions.
 - (c) Cooperation with State and Federal officials.
 - (d) Expenses incurred.
 - (e) Completeness of reports.
- (3) Compliance with regulations of the Department and rules of the Survey.
- (4) Willingness to work.
- (5) Initiative.
- (6) Dispatch.

- (7) Accuracy.
- (8) Neatness.
- (9) Cheerfulness with which duties are performed.
- (10) Personal conduct.

No attempt has been made to list these subjects in the order of their importance. An Agent's entire course of conduct and activity will be scrutinized and considered in determining his efficiency.

APPENDIX

Title 18.--U. S. Criminal Code and Criminal Procedure.

Sec. 244. Allowing prisoner to escape. "Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than \$2,000.00, or imprisoned not more than two years, or both. ***" (R.S. Secs. 5409, 5410; Feb. 6, 1905, c. 454, Sec. 2, 33 Stat. 698; Mar. 4, 1909, c. 321, secs. 138, 139, 35 Stat. 1113.)

Sec. 246. Rescuing prisoner; concealing person from arrest. "Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discover and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than \$1,000.00, or imprisoned not more than six months, or both." (R.S. secs. 5401, 5516; Mar. 4, 1909, c. 321, sec. 141, 35 Stat. 1114.)

Sec. 247. Rescue of Prisoner. " *** Whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than \$500.00 and imprisoned not more than one year." (R.S. sec. 5401; Mar. 4, 1909, c. 321, sec. 143, 35 Stat. 1114.)

Sec. 753h. Prisoners escaping or attempting to escape punishment. "Any person * * * * who is in custody by virtue of any process issued under the laws of the United States by any Court, judge, or commissioner, or who is in custody of an officer of the United States pursuant to lawful arrest, who escapes or attempts to escape from such custody * * * * shall be guilty of an offense. * * * and if the custody * * is by virtue of an arrest on charge of or for a misdeameanor, and prior to conviction, the offense of escaping or attempting to escape therefrom shall constitute a misdemeanor and any person convicted thereof shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both * * * *" (As amended August 3, 1935, c. 432, 49 Stat. 513.)

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